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**FBI INVESTIGATION OF FIRST AMENDMENT
ACTIVITIES**

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HEARINGS

BEFORE THE

SUBCOMMITTEE ON

CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

JUNE 21 AND 22, 1989

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FBI INVESTIGATION OF FIRST AMENDMENT ACTIVITIES

(FBI Policy of Questioning Americans Who Write Letters to or Otherwise Contact Officials of Communist Countries)

WEDNESDAY, JUNE 21, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 1 p.m., in room 2141, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, Robert W. Kastenmeier, Patricia Schroeder, F. James Sensenbrenner, Jr., and Craig T. James.

Also present: James X. Dempsey, assistant counsel, and Colleen Kiko, minority counsel.

OPENING STATEMENT OF CHAIRMAN EDWARDS

Mr. EDWARDS. The subcommittee will come to order.

Today the subcommittee is examining the FBI policy of questioning Americans who have written to the Soviet Embassy or to some other bloc country asking that political prisoners be released or something like that. What happens to some of these Americans is that within a few days or weeks they get visits from the FBI asking why they did this and what their connection was.

As a matter of fact, Amnesty International over the past 2 years, this very reputable organization of which I happen to be a loyal member myself, has had more than two dozen instances of members who have written these letters asking for prisoners to be released or be allowed to emigrate. This includes schoolteachers, doctors, business professionals, housewives, government employees, and the response to this benevolent thing they are doing is to get a visit from the FBI, and all any of them had done is write to these governments or embassies on behalf of political prisoners.

We are not limiting this to Amnesty International. Other men and women and children have had the same experience. Two grade schoolchildren from New Jersey and Indiana wrote letters to the Soviet Embassy in connection with their school work and they were visited by the FBI. A 73-year-old grandmother, who is a subscriber to Soviet Life, which is a picture magazine, sort of like our

Life magazine, wrote to the Russian Government, thanking them for their fine assistance when the whale was trapped up in Alaska, and she got a visit from an FBI agent.

There are no implications here that the FBI is investigating Amnesty International. There is no possibility, to our best knowledge, that there are any politics involved or that it is politically motivated at all, except that the FBI strongly feels that they must look into anyone who has any connection with the Soviet Government or a bloc nation in the interest of national security.

We are curious to look into this program because we think it could very well be a terrible waste of money. Also, it is very clear that it is chilling to Americans exercising freedom of speech and freedom of communication generally. I don't think any of us would disagree that Americans should not have to explain to the FBI why they write lawful letters.

For many years the FBI came to this subcommittee, to Mr. Sensenbrenner and to me and said they didn't have enough money for counterespionage. They said they had terrible problems because a lot of the diplomats, especially in New York, had diplomatic immunity and they might very well have been spies; they didn't have enough FBI agents to really look into it. And we were able to get them more funds for this very important foreign counterintelligence work. Now it appears that at least some of this money is being used to interview these letter writers, and so we are going to have some questions about it: isn't there a better way than that to catch spies?

When we examined the Library Awareness Program back in 1988 we had quite a lot of communication with the FBI. In February 1988 they issued their justification for the program in which they stated "The FBI must logically pursue any contact between a Soviet national and an American citizen, regardless of where the contact occurs or the profession of the person contacted."

As a result apparently of this policy that the FBI has, Americans are asked to explain to the FBI about these letters. One of the questions we have is, where is the presumption of innocence?

Today's hearing will be followed in a subsequent hearing by witnesses from the FBI. We are going to ask them a lot of questions: Why don't you use the phone? Is all of this necessary? I guess most of all, we are going to ask them, I'm sure, how they can narrow this program so that it doesn't violate the rights of people, if they could narrow it to where there is some indication of danger, like somebody was carrying around a lot of strategic information.

I now yield to the gentleman from Wisconsin, Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman. First, I would like to ask unanimous consent that the subcommittee permit the televising and photography of this hearing pursuant to committee rule 5.

Mr. EDWARDS. Without objection, so ordered.

Mr. SENSENBRENNER. Mr. Chairman, I am very proud to be here today to congratulate each and every witness who has taken time out of his or her life to come here and testify. Theirs is truly an excellent service to our great country. Often we are plagued with apathy by American citizens regarding our country as well as for

actions which occur in other countries. You are here today because of your concern not only for our country, but for human rights all over the world.

As has been admitted in several instances in the testimony by Mr. Paul Hoffman of Amnesty International, the FBI has been statutorily mandated by this Congress to protect our national security. It is as a result of this mandate that the FBI attempts to gather intelligence which could be vital for the protection of the security of our country.

Contacts by U.S. citizens with foreign countries is a very likely area by which to develop important intelligence. It's possible that only 1 in 1,000 individuals interviewed by the FBI would have any kind of information which would be beneficial to the FBI, but nevertheless, that 1 individual might provide a key intelligence link to that country.

The FBI cannot disclose the reasons for its interviews with these individuals, nor can it disclose how it learned of their contacts with foreign countries without disclosing classified information. If the opportunity were provided for the FBI to testify in a closed hearing, I am sure it would be quite willing to explain in more detail the purpose for the interviews. Without such an opportunity, the FBI remains defenseless.

Several of the witnesses have alluded to their occasional feelings of intimidation when the FBI contacted them. I would have to expect that a certain amount of intimidation is unavoidable by the mere fact that the FBI visits you, for whatever purpose. Any kind of visit by the FBI is a bit disconcerting. I get intimidated when a patrol car has on its flashing lights behind me even if I am not speeding and they want to stop a car ahead of me. That's a natural response. Because of that, I don't doubt that each person contacted by the FBI who is here today has had some of the same feelings.

But what is quite commendable to me is that the majority of the witnesses here today did talk with the agents about their activities. There was no requirement to do so; no one was ordered to do so. Granted, some agents may attempt to be persuasive and may seem persistent, but there is no requirement that anyone speak to the agents. Indeed, many individuals have declined to speak to the FBI. But that is not what the majority of these witnesses did. These good people, as well as others who are not here today, voluntarily took time out of their lives to discuss with the FBI their reasons for contacting foreign governments. They volunteered information to the agent.

I am proud of these people and I am grateful that they have pride enough in their country and in the principles of democracy to voluntarily assist the FBI in carrying out its duties, that of protecting our national security.

What is more precious than protecting our country? Obviously, these people care about our country and work very hard to obtain for people in other countries the same liberties we enjoy here in America.

So my hat is off to you and I look forward to your testimony today.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner.

Mr. James, the gentleman from Florida. Do you have a statement?

Mr. JAMES. Not at this time, Mr. Chairman. Thank you.

Mr. EDWARDS. The witnesses will testify as a panel.

[Witnesses sworn.]

Our first member of the panel is Paul Hoffman, chair, board of directors, Amnesty International USA, from Los Angeles.

Mr. EDWARDS. Mr. Hoffman, you may proceed.

**STATEMENT OF PAUL HOFFMAN, CHAIR, BOARD OF DIRECTORS,
AMNESTY INTERNATIONAL USA**

Mr. HOFFMAN. Thank you, Mr. Chairman and members of the subcommittee. We thank you for this opportunity to raise Amnesty International's concerns about visits by the FBI to its members.

I have submitted a prepared statement and I don't intend to read the whole statement.

Mr. EDWARDS. Without objection, Mr. Hoffman, the entire statement will be made a part of the record.

Mr. HOFFMAN. Thank you, Mr. Chairman.

What I would like to do is summarize the problem that we face and then make some recommendations or requests based on our experience with this problem.

Amnesty International in the United States has more than 350,000 members spread across the country, working in communities in every State in this country. We are as a group committed to working for the release of prisoners of conscience and to ending all forms of torture and executions.

One of the most important techniques that we use is letter writing campaigns, mainly letters addressed to foreign governments on behalf of people in prison for their beliefs or other nonviolent expressive activities, or people who are threatened with torture or execution. We have found over the years that these letters often help to obtain the release of political prisoners or they help to ameliorate their prison conditions or otherwise help to prevent human rights abuses.

The people who write letters with Amnesty and who are members of Amnesty are from all walks of life, all ages. We are Republicans, Democrats, Liberals, Conservatives. We are a very broad cross section of people in this country.

Amnesty's concerns are global. We work for prisoners in every region of the world, without exception, in the areas of our concerns.

However, it is Amnesty International's work for prisoners in the Soviet Union and certain other Eastern European countries that have led to the problems that our members have experienced with the FBI.

As my prepared statement outlines in more detail, Amnesty International has a large number of human rights concerns in the Soviet Union, East Germany, Bulgaria, Yugoslavia and other Eastern European countries. We have raised these concerns with the governments of the countries by large letter writing campaigns designed to bring pressure to end the human rights abuses in these

countries that we have documented, including the imprisonment of hundreds of political prisoners in each of these countries.

In the past 5 years, though, the FBI has visited at least three dozen and perhaps more Amnesty members to inquire about the letters that they have written to these governments. Many of these visits have been handled in a courteous matter and have ended when the FBI agents learn that the people involved were members of Amnesty International and when they learned about what they were doing.

Unfortunately, some of these visits have occurred in circumstances that were unnecessarily intimidating or were handled in an intimidating manner. Some members were visited or called at their places of employment; some employers were notified of the FBI's interest in interviewing the member involved; some members have been asked inappropriate questions about their political beliefs or about the kind of literature they read; and in some cases friends and neighbors of the people involved have been questioned and contacted.

When we first learned about these visits in 1984, which is as far back as we can recall that the FBI has visited people, we thought it was an isolated phenomena. Although the people involved within Amnesty were concerned about the visits, we didn't take any further action about it.

Then in 1987 more than a dozen Amnesty members were visited by the FBI. It seemed that there were many more visits than there had been in the past. People within our membership began to be more and more concerned about this program and about the effect that it was having on our program.

We initiated correspondence with the FBI, which later led to a meeting in early 1988 with FBI officials to discuss these concerns, particularly our concern that the policy of visiting people who wrote to the Eastern bloc countries might dampen our enthusiasm and undermine the work that we are trying to achieve about these human rights violations.

The FBI assured us at that time and they have assured us since that Amnesty International itself is not the target of any investigation and that the FBI appreciates the work that we are doing and believes it to be a very appropriate form of action. However, the FBI has made it clear to us in these meetings and in correspondence that the visits will continue and that they need to conduct these visits to pursue their own objectives.

The FBI has also indicated that its guidelines for conducting these visits are classified, and they have really been unable to give us much more information about how the program is conducted.

Recently, in the first 5 months of 1989 there have already been 10 visits by the FBI to AIUSA members. This is a much higher rate, an acceleration in the rate of visits to Amnesty members. If that continued for the rest of the year, there would be nearly two dozen FBI visits in 1989 alone.

My colleagues at the table will talk about their own experiences and explain in more graphic detail than I can their feelings about these visits. But clearly, as an organization we are very concerned that an acceleration in the program, that this pattern of visiting people will hamper our ability to draw new people into this kind of

work, which we believe is critical to help people in countries like Bulgaria and the Soviet Union and other countries where there are grave human rights concerns, as well as people in other countries for whom we work.

What I would like to do now, with your permission, is just lay out some of the recommendations that we would have both for the FBI and hopefully for this subcommittee.

First, we are hopeful that the FBI will issue a public statement declaring that Amnesty International is not a target of any FBI investigation and assert that the activities that we are engaged in are recognized as legitimate and the kind of activities that would not jeopardize any AIUSA member's standing in his employment or in any other way. They have told us that privately, but we believe that the FBI should make that statement more public to reassure people who are engaged in this activity.

We also hope that the FBI will undertake a review of this program under which the interviews are conducted, with a view hopefully toward modifying it to take into consideration the kinds of concerns that we have raised and to make sure that the kind of work that we are engaged in is not impeded. We have some specific recommendations that might be part of that review.

We are hopeful that if interviews are initiated that they would be terminated upon the acknowledgment that the person interviewed is an Amnesty member engaged in this kind of work. That has not always happened and we think it should happen.

Interviewees should not be questioned at their places of employment. This really is unnecessary, in our view. If contacts need to be made in appropriate circumstances, they clearly should not be made in a place of employment.

Under no circumstances should the employer of an individual be notified of the interview, certainly if it is an initial interview, to try to find out what kind of activity the person is engaged in. Perhaps if there is some other information available, other techniques might be used, but not in the kinds of situations that we have been confronted with.

We believe that the scope of the interview really ought to be narrowly tailored and they should in no circumstances discuss the individual's personal beliefs or political literature in the possession of the individual.

We are also hopeful that the FBI would issue a directive clarifying its policies and procedures with respect to interviews of Amnesty members who have been involved in this kind of letter writing campaign and that this directive be circulated to all FBI offices. We are hopeful that the directive would explain the kind of work that Amnesty International does and indicate that Amnesty members do write a lot of letters to foreign governments and embassies and why they write these letters, to give FBI agents in the field a better understanding of this work.

We also hope that the FBI will discipline any agent whose conduct during the interviews is improper and violates the limitations established by FBI policy guidelines.

We hope that the FBI will recognize an affirmative obligation to ensure that the human rights work of Amnesty International or other human rights organizations is not undermined by this kind

of program. Recognizing the importance of the FBI's work in the area of national security, we still believe that they have an obligation to make sure that that work does not interfere with the kind of work that we are doing.

Finally, we hope that the FBI will make available to us the files that it has referring to Amnesty International on our request.

We thank you very much for this opportunity to raise these concerns with you.

Mr. EDWARDS. Thank you, Mr. Hoffman. We will have all of the testimony before the subcommittee has some questions.

[The prepared statement of Mr. Hoffman follows:]

PREPARED STATEMENT OF PAUL HOFFMAN, CHAIR, BOARD OF DIRECTORS, AMNESTY
INTERNATIONAL USA

INTRODUCTION

Thank you, Mr. Chairman. The United States section of Amnesty International (AI) welcomes this opportunity to testify before the subcommittee on civil and constitutional rights and commends your leadership in holding these important hearings. We consider the question of approaches by the Federal Bureau of Investigation (FBI) to Amnesty International USA (AIUSA) members to be a matter that merits the most serious consideration.

Amnesty International is a worldwide human rights movement which, since its inception in 1961, has worked for the release of "prisoners of conscience"--men and women detained anywhere for their beliefs, color, sex, ethnic origin, religion, or language, provided they have not used or advocated violence. Amnesty International opposes the death penalty and torture or other cruel, inhuman, or degrading treatment without reservation, and advocates fair and prompt trials for all political prisoners.

Amnesty International is independent of all governments, political groupings, ideologies, economic interests, and religious creeds. Amnesty International acts on the basis of the United Nations Universal Declaration of Human Rights and other international instruments. Through practical work for prisoners within its statute, Amnesty International

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participates in the promotion and protection of human rights in the civil, political, economic, social, and cultural spheres.

Amnesty International has formal relations with the United Nations (ECOSOC), UNESCO, the Council of Europe, the Organization of American States, and the Organization of African Unity. Amnesty International was the recipient of the 1977 Nobel Prize for Peace.

FBI APPROACHES

The focus of this statement is on specific aspects of the work of Amnesty International USA that have come under the scrutiny of the FBI. Our testimony addresses the nature and scope of Amnesty International's activities during the period corresponding with the FBI contacts. Finally, it details Amnesty International's specific concerns regarding human rights in countries which have been the subject of inquiries by the FBI.

At present, Amnesty International has a membership of 900,000 individuals worldwide, 350,000 of whom are members of the United States section of Amnesty International. As volunteers, AI members work towards the goals delineated in our statute through a variety of activities and techniques. These include letter writing campaigns to government

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officials, organizing petition drives on the behalf of prisoners of conscience, creating publicity on specific cases, and engaging in public education campaigns to increase awareness about human rights. Local chapters "adopt" individual prisoners of conscience and work for their release through letter writing. In addition, they participate in campaigns highlighting patterns of human rights violations in specific countries. Others have joined our efforts through active participation in theme campaigns ranging from torture, to "disappearances," to the death penalty. Still other volunteers have taken up the human rights banner through participation in a variety of professional networks such as our legal support network and health professionals' network. Through participation in AIUSA's urgent action network, we have developed a "quick strike force" capable of generating thousands of telegrams on behalf of prisoners in life-threatening situations.

Amnesty International members are ordinary citizens from all walks of life. Their diversity is as great as their numbers. They are firefighters, teachers, librarians, students, artists, factory workers, musicians, and lawyers. Whether in Senegal, Japan, Israel, Turkey, the United States, Sri Lanka, Australia, or Chile, they are linked by the common goal of promoting and protecting human rights around the world. Working towards this end, these men, women, and children, half a million strong, have written

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letters to government officials in over 135 countries. In recent years, AIUSA members who have worked on behalf of prisoners in Bulgaria, the German Democratic Republic (GDR), the Union of Soviet Socialist Republics (USSR), and Yugoslavia, have in the process, inadvertently brought themselves under the scrutiny of the FBI.

For several years the FBI has occasionally made contact with and interviewed members of AIUSA. In recent years, there has been an increase in the number of contacts, or, at minimum, an increase in the number of reported contacts between the FBI and AIUSA members. Since August 1984, our U.S. offices have received information regarding FBI approaches to 33 AIUSA members across the country. The cases that have been brought to our attention are believed to represent only some of the actual number of incidents. In one local chapter in Arlington, Virginia, five Amnesty members were questioned during an 18-month period by FBI agents.

The tactics employed by some FBI agents in questioning our members have often been intimidating. Some have been asked if they have "subversive Communist" literature in their homes; others have been told that their letter writing activities could jeopardize security clearances at their places of employment. In several instances, friends and neighbors have been questioned about their knowledge of

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AIUSA members who are the subject of FBI investigations. On one occasion, an FBI agent visited the home of an AIUSA member repeatedly for three consecutive days hoping to find the individual at home. In a separate incident, an FBI agent insisted on meeting with an AIUSA member despite the fact that she was ill with the flu. Amnesty International USA members who have been reluctant to be interviewed by FBI personnel have been informed that their unwillingness to cooperate would be noted by FBI officials. One man was called into the office of the director of personnel at his workplace only to find an FBI agent waiting to interview him.

The individuals who have been subjected to this kind of treatment by FBI agents could not be considered a threat to national security by any means. Despite this, a 59-year old librarian from eastern Pennsylvania; a third-grade school teacher from Fremont, Michigan; an undergraduate at Northwestern University, in Evanston, Illinois; and a firefighter from Phoenix, Arizona, have been among the scores of AIUSA members whose lives have been disrupted by visits from the FBI. The fact that the majority of these men and women have continued to work with Amnesty International USA, despite harassment and intimidation by the Federal Bureau of Investigation, is a tribute to their dedication to the cause of human rights. However, they continue to question why the simple act of writing a letter

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has meant that their lives, like the lives of the prisoners on whose behalf they are working, have become the subject of government investigations.

For the past five years, the United States section of Amnesty International has documented approaches by the FBI to our membership. On July 2, 1987 the executive director of AIUSA wrote to John Otto, the then-acting director of the FBI, expressing concern over the increasing number of contacts by the FBI. James Geer, assistant director in charge of the intelligence division of the FBI, responded to AIUSA's letter on July 31, 1987. Geer indicated at that time that the FBI does not have "an investigative interest in Amnesty International nor is there any attempt by the FBI or its personnel to interfere in your organization's endeavors."

During 1987 there was a rise in the number of new FBI contacts with our volunteer membership around the country. In each of the cases the AIUSA members had written letters to officials of Eastern Bloc countries. On December 21, 1987 AIUSA again wrote to the FBI, this time to its new director, William Sessions. At that time a meeting was requested with the FBI.

On February 9, 1988 Geer responded to AIUSA's letter and reiterated his earlier assertion that the organization was

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not under investigation by the FBI. He further stated, "unfortunately, some of the foreign officials or diplomatic establishments contacted by your members are of interest to us and the fact that the contact was solely for the interests of Amnesty International does not become known to us until we conduct an interview." Geer also indicated his willingness to meet with representatives of AIUSA to discuss this matter further.

On March 21, 1988 a meeting took place between FBI officials and staff of Amnesty International USA at the FBI's headquarters in Washington, D.C. Present at the meeting were Geer and two other FBI officials, Donald Stukey and Ron Klein. Representing the United States section of Amnesty International were the deputy director of AIUSA and the then-director of AIUSA's Washington office. During the course of the meeting the representatives of AIUSA were assured that the organization was not the subject of an FBI investigation. A number of the issues raised by representatives of AIUSA during the course of the meeting were never addressed because FBI officials indicated that a discussion of these points would require them to reveal classified information. For example, when AIUSA representatives asked what actions on the part of an individual might trigger an interview with FBI agents, Geer refused to disclose this information stating that it was classified.

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Amnesty International USA does not question the authority of the FBI to undertake investigations relating to legitimate national security concerns. However, we consider the scope of the interviews conducted with AIUSA members and the methodology employed by the FBI in the course of their investigations to be unnecessarily intimidating and we believe some change in the policy is required. The initiatives undertaken by Amnesty International USA in the four countries specified above are inspired purely by a concern for human rights. Contacts made by AIUSA members to foreign governments are intended solely to pressure government leaders to put a halt to human rights violations in their respective countries.

***HUMAN RIGHTS CONCERNS: THE UNION OF SOVIET SOCIALIST
REPUBLICS, THE GERMAN DEMOCRATIC REPUBLIC, BULGARIA, AND
YUGOSLAVIA***

During a given year Amnesty International members in the United States write thousands of letters to officials of foreign governments. These governments span all political ideologies. Four of these countries have been of particular interest to the Federal Bureau of Investigation: Yugoslavia, the Soviet Union, Bulgaria, and the German Democratic Republic. They have likewise been the subject of considerable attention and concern on the part of Amnesty

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International. Despite pledges made by these governments to respect human rights, in practice, they, like scores of other governments, continue to deny their own citizens the most fundamental human rights.

THE UNION OF SOVIET SOCIALIST REPUBLICS (USSR)

Changes in the political climate in the Soviet Union have gathered momentum in recent years. In the past two years the Soviet authorities initiated some discussion of human rights issues that had previously been taboo. The use of psychiatry for non-medical purposes came under public scrutiny for the first time in 1987.

During the past two years a large number of prisoners of conscience were freed; a significantly fewer number of people were arrested on political grounds. Although the general picture has been somewhat encouraging, there are, as yet, no changes in Soviet law of which Amnesty International is aware that would protect citizens from being imprisoned for peacefully exercising their rights, from being ill-treated in places of detention, or from the death penalty.

At present, it is believed that there are some 100 prisoners of conscience still detained in the Soviet Union. Amnesty International is closely monitoring the review of the Soviet penal code and has made recommendations to the authorities

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that would bring Soviet criminal law more closely in line with international standards. Of particular concern have been laws that restrict freedom of expression.

In the context of a major review of Soviet criminal law, public discussions have been initiated on the death penalty. Although the death penalty remains in force in the USSR, the authorities are said to be considering restrictions on its application. Amnesty International continues to work for the abolition of the death penalty in the USSR and has selected the Soviet Union as one of six targeted countries in its 1989 international campaign against the death penalty.

The Soviet Union has been one of many targets of AI country campaigns in recent years. It is in the context of participation in campaign actions--such as letter writing to foreign embassies--that our membership has come under the scrutiny of the FBI.

THE GERMAN DEMOCRATIC REPUBLIC (GDR)

Any assessment of the German Democratic Republic's compliance with human rights norms is hindered by the secrecy surrounding the subject. The factors that maintain this secrecy include: secret trials, secret directives to the legal profession, lack of relevant crime statistics,

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laws penalizing sending information abroad, the failure to report criminal proceedings against political prisoners in the media, and legal advice to friends and relatives of prisoners that publicity in the foreign media would jeopardize or delay a prisoner's release or emigration.

The German Democratic Republic has, thus far, been unwilling to engage in public discussion of human rights or to provide information about AI's concerns in response to inquiries made by the organization. Allegations of human rights violations have been consistently rebutted by the authorities; the government has repeatedly denied that political imprisonment in the German Democratic Republic is a problem. Consequently, AI is heavily dependent for its information on sources outside the country, in particular on testimony from former prisoners. This information reveals a widespread and systematic pattern of human rights abuse in the German Democratic Republic.

Although it is impossible to provide an exact number, scores of people are regularly arrested for the peaceful exercise of fundamental human rights. According to the findings of a new report *German Democratic Republic: Secret Justice*, published earlier this year, at least 461 prisoners arrested since January 1984 have been detained for their non-violent activities. Many were arrested while exercising their rights to freedom of expression, association, and assembly

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as well as the right to leave one's country--all rights enshrined in the International Covenant on Civil and Political Rights, which the German Democratic Republic ratified in 1973.

Some laws on the books contain provisions that explicitly restrict the exercise of human rights; others are so vaguely formulated as to enable imprisonment for almost any political activity that is disapproved of by the authorities. In other instances, the legal exercise of the right is so limited that people can exercise it only by breaking laws which may not in themselves conflict with international human rights standards. This is clearly the case with respect to the right to leave one's country. Public access to political trials is restricted to such a degree that it hinders any assessment of whether such trials conform to international norms. These methods of secrecy makes it difficult for citizens of the German Democratic Republic to discern the dividing line between legal and illegal activity, creating a climate of uncertainty, fear, and intimidation.

Likewise, the barriers to public scrutiny make it difficult to tell whether the judiciary is acting independently of political pressure. There is ample evidence that both arrests and releases of political prisoners are subject to political expediency. This includes "buying-out" of

political prisoners, inconsistent application of laws on the books, and sudden, arbitrary releases which call into question whether the authorities ever seriously believed that the prisoners in question were guilty of the alleged offenses.

Every year Amnesty International adopts the cases of some 100 prisoners of conscience in the German Democratic Republic. The majority of them are would-be emigrants, imprisoned either for trying to leave the country without permission or for persisting in their efforts to secure permission to emigrate to other countries. As a result of the prevalence of sweeping laws that result in considerable secrecy surrounding human rights, it is difficult to provide exact statistics on political prisoners. Following an amnesty in 1987, which led to the release of all known prisoners of conscience detained at that time, arrests on similar grounds have continued to be widespread.

Former prisoners complain of substandard prison conditions including overcrowded cells, poor ventilation, limited access to natural light, and unpalatable food. Difficulties and delays in receiving medical attention have also been reported.

Prison staff have been reported to be arbitrary in their treatment of political prisoners with frequent withdrawal of

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privileges such as family visits. Disciplinary measures are reported to be harsh. Although ill-treatment does not appear to be a frequent practice, it has been reported on occasion. The forms of ill-treatment most frequently alleged are beatings by prison staff, the chaining of prisoners to beds in special punishment cells, and prolonged isolation. Allegations of ill-treatment do not appear to be adequately investigated by the authorities.

It is in the context of letter writing activities on human rights concerns in Bulgaria, that members of our organization have been approached by personnel from the Federal Bureau of Investigation.

BULGARIA

The plight of the ethnic Turkish minority--estimated to be 10 percent of the population or 900,000--has been the primary concern of Amnesty International in Bulgaria. Since 1984 this minority has been the target of intensified government repression. The government's campaign of forced assimilation has included the forced adoption of Bulgarian names and the renunciation of religious customs. Attempts have also been made to suppress the use of the Turkish language. Muslim practices such as male circumcision, have been met with official disapproval and, in some cases, arrest.

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Failure to comply with these policies has resulted in imprisonment, forced resettlement, or deliberate killings. Between December 1984 and March 1985, some 250 ethnic Turks were arrested when, according to the authorities, the entire minority "spontaneously and voluntarily" renounced their Islamic names in favor of Bulgarian ones. During the implementation of the government's assimilation campaign, over 100 ethnic Turks are reported to have been killed by government security forces. The government has failed to adequately investigate these killings.

Today large numbers of ethnic Turks remain imprisoned or banished. Entire Turkish families who oppose the assimilation campaign have been banished to remote areas of the countries. In addition to their forcible relocation, their freedom of movement has been severely restricted. Under the People's Militia Law, internal banishment for up to three years and other restrictions on freedom of movement can be imposed. These restrictions can be renewed indefinitely. They have been applied to both ethnic Turks who protest against the assimilation campaign and to released ethnic Turkish prisoners.

Others have been imprisoned for reasons unconnected with the assimilation campaign. Such detentions generally followed attempts to exercise one's right to freedom of expression or

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religion. At the end of 1987, according to estimates from former prisoners, it was believed that some 1,000 political prisoners were being detained in Stara Zagora prison, where most political detainees are imprisoned. The majority had been convicted in connection with the assimilation campaign or for attempting to leave the country without official permission.

Over the past year, independent human rights activities have been stepped up in Bulgaria. In January 1988, the Independent Association for the Defense of Human Rights in Bulgaria was established. In recent years, three of its members were placed under house arrest and two others were forced to leave the country.

The constitution does not guarantee freedom of movement and only rarely are citizens who seek to emigrate permitted to do so. Those who attempt to leave the country without permission may be punished by up to five years' imprisonment under article 279 of the criminal code or up to six years if they are repeat offenders.

The death penalty remains in force in Bulgaria; during 1987 at least two people were sentenced to death and three were known to have been executed.

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Despite official denials, Amnesty International believes that Bulgarian authorities have been responsible for human rights abuses on a widespread and systematic scale.

It is as a result of their letter writing activities on behalf of prisoners of conscience from Bulgaria that members of our organization have found themselves under investigation by the FBI.

YUGOSLAVIA

The actual number of prisoners of conscience in Yugoslavia remains unknown. It has variously been reported in the Yugoslav press as 500 and 800 while other, unofficial estimates are much higher. At least 200 people were known to have been detained in 1987.

In recent years, the majority of people charged with political offenses have been ethnic Albanians from Kosovo, the sight since 1981 of nationalist unrest. Most defendants have been accused of activities in support of the demand for Kosovo to be given republic status and to cease being a part of the Republic of Serbia. Others have advocated the creation of an Albanian republic within Yugoslavia, composed of Kosovo and other regions with large ethnic Albanian

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communities, with a view towards eventual unification with Albania.

In addition to ethnic Albanians, other Yugoslav citizens have also been the target of human rights violations. Many have been convicted of "hostile propaganda." Cases known to Amnesty International have included individuals detained for expressing Serbian nationalist views, for advocating a Muslim republic in Yugoslavia governed by Islamic law, and for denouncing restrictions on freedom of expression and religion.

At least 10 prisoners of conscience are serving known to be sentences for refusing to participate in military service on religious grounds. Most are Jehovah's Witnesses; several have already served a previous sentence for the same offense. The Constitutional Court of Yugoslavia has rejected appeals by Jehovah's Witnesses that compulsory military service be declared unconstitutional.

Some political detainees, mostly ethnic Albanians, have reported being ill-treated while in pre-trial detention. AI has received no response from the government regarding its inquiries into allegations of ill-treatment of prisoners. In May and June of 1987, the daily newspaper *Barba* published a series of articles based on visits to several prisons. They described harsh prison conditions and criticized the

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use, in Serbia and Croatia, of the regime known as "strict observation" whereby prisoners can be summarily deprived of their rights.

At least three people in 1987 were sentenced to death, two for multiple murder and one for rape and murder. Three people were executed, all for multiple murder.

Amnesty International USA members continue to press the authorities to release prisoners of conscience detained in Yugoslavia for the exercise of their beliefs or non-violent activities. On occasion, these activities have resulted in investigations by the FBI.

RECOMMENDATIONS

The United States section of Amnesty International is aware that the Federal Bureau of Investigation has the authority to conduct foreign counter-intelligence investigations in the U.S. Within that context, it recognizes that the FBI has the right to contact and interview individuals whom it thinks may have information relevant to its concerns.

In correspondence and meetings with the FBI, Amnesty International USA has been assured by the Federal Bureau of Investigation that our organization is not the subject of an

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FBI investigation. Further, the FBI has indicated that it has no intention of interfering in the endeavors or legitimate goals of our organization. Nonetheless, the FBI has continued to interview AIUSA members engaged in letter writing to authorities in a number of foreign countries. While these investigations of AIUSA members have not been systematic, they are frequent enough to suggest a clear pattern. In recent years the frequency of these contacts appears to have intensified. Further, the manner in which these interviews have been carried out has often been intimidating.

In light of the history of contacts between the FBI and AIUSA members, Amnesty International USA would like to make the following recommendations:

- that the FBI issue a public statement declaring that Amnesty International USA is not the target of an FBI investigation; the statement should further assert that the activities of AIUSA members are recognized as legitimate and that participation in the organization should not jeopardize an individual's standing in any way whatsoever;

- that the FBI undertake a review of the program under which these interviews are conducted with a view towards modifying it; consideration should be given to either restricting or eliminating FBI visits to AIUSA members so as

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not to impede the work of the organization; at the very least the following issues should be addressed in any review of the program:

- 1) if interviews are initiated, they be terminated upon acknowledgment that the interviewee is an AIUSA member;
- 2) interviewees should under no circumstances be questioned at their places of employment;
- 3) under no circumstances should the employer of the individual in question be notified of the interview; and
- 4) that the scope of the interview should not include questions about the nature of the individual's political beliefs or political literature in the possession of that individual;

-that the FBI issue a directive clarifying its policies and procedures with respect to investigations of AIUSA members who have been involved in the letter writing campaigns to foreign governments; that this directive be circulated to all FBI field offices;

-that the FBI issue a directive to all of its field offices explaining Amnesty International's mandate as well as the nature of AI's work. The directive should state specifically that AIUSA members write many letters to

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foreign governments and embassies and that this practice is well within their rights;

-that the FBI discipline any agent whose conduct during interviews is improper and violates the limits of established FBI policy guidelines;

-that the FBI recognize the importance of the work of Amnesty International in the field of human rights and that it acknowledge its affirmative obligation to ensure by its actions that the work of Amnesty International USA is not undermined; and

-that the FBI make available copies of all files making reference to AIUSA to the organization upon request.

CONCLUSION

Governments often try to suppress facts about human rights. Amnesty International brings them out into the open. Our singular aim in investigating and publicizing human rights violations is to intensify the public pressure that can bring these abuses to an end.

As with any struggle, it is the balance of forces that determines whether a movement will go backwards or forwards. With human rights it is no different. That force within

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Amnesty International consists, not of armies or governments, but of people.

It is our volunteer membership, over half a million strong, that is at the heart of our work. In the forefront of this struggle are ordinary men and women who have dedicated themselves to the cause of human rights irrespective of the risks involved. They are the men and women before you today. Their actions reflect an idea which had its origins 28 years ago--the idea that ordinary people could help to set free or save from torture or death people they had never met, in countries not their own, by writing polite letters to the governments involved.

We cannot risk their being silenced through intimidation. If they are, human rights will ultimately loose out, for the news of the plight of scores of prisoners tortured, detained unjustly, or killed, might never reach the outside world without them.

Thank you.

Mr. EDWARDS. The next member of the panel to testify is Ms. Phyllis Grady of Havertown, PA. Welcome, and you may proceed.

STATEMENT OF PHYLLIS GRADY, HAVERTOWN, PA

Ms. GRADY. Thank you, Mr. Chairman.

My name is Phyllis Grady. I reside at 567 Kathmere Road, Havertown, PA. I am 59 years old and I work as a librarian in an elementary school in Radnor Township, PA. I have been a member of Group 216 of Amnesty International USA since 1983. The following is a description of my contact by the FBI in May 1989.

On Monday, May 22, 1989, I returned home from a weekend trip about 3:30 p.m. and found a note that had been placed between the front door and the storm door of my house. It was written on a sheet of yellow legal-size paper and had my name and address at the top, and it said, "Please give me a call so I can arrange a time to talk with you. There is no problem; I need some information. Thank you." And it was signed Donna Kibbie, FBI-Newtown Square Office, and it gave the telephone number.

I called the office immediately, but Ms. Kibbie was not in the office. I tried again the next morning, with the same result. Finally, Ms. Kibbie reached me at home that afternoon and said she could not discuss the matter with me on the phone and needed to speak directly to me.

Since my work hours did not seem to allow a time when I could go to the FBI office, Ms. Kibbie asked if she could come to my place of work. Since there seemed no other way of handling her request for a meeting, I agreed to have her come to my workplace, a public elementary school, the next day at lunch time, at about 12:15.

Ms. Kibbie arrived promptly the next day, Wednesday, May 24, and we went into the small study room of the library where I work.

After showing me her identification, Ms. Kibbie said that she was with the foreign espionage section of the FBI and was contacting me because my name was on a list at the Yugoslavian Embassy.

I asked how she had acquired this information, but she evaded the question, mentioning only the recording of license numbers.

I explained that I had never been to the Yugoslavian Embassy nor had I visited Yugoslavia. Ms. Kibbie said that the FBI was contacting people who might be recruited to spy for them, that is, for the countries whose embassies had been contacted.

I explained that as a member of Amnesty International I often send letters to members of foreign governments on behalf of prisoners of conscience and routinely send copies of the letters to the country's embassy in Washington, DC.

Ms. Kibbie did not seem to know about the work of Amnesty International and listened with some interest to my description of our activities. I invited her to come to our meetings, but she said she was busy for the next several months. This conversation lasted 15 to 20 minutes, and Ms. Kibbie left. She was pleasant and polite during the entire visit.

The effect of this whole experience was to make me feel really uneasy that the FBI would come directly to my home and to my

workplace as if I were under surveillance, and there was even an indication that my phone might be tapped. Other members of my group, 216, expressed the same uneasiness when I told them about my contact. I must confess that I am extremely concerned that this activity of the FBI may hamper our efforts to enlist people in our work.

I didn't put this in the testimony, but I am also aware of another person in our area who was contacted because of letters to the Bulgarian Embassy.

Attached to my report is Donna Kibbie's note. I was also going to attach Freedom Writers, but I think you are already familiar with Freedom Writers. It is interesting that the last issue of Freedom Writers has a letter on behalf of a person who was in prison in Yugoslavia and at the bottom of the letter is the address of the Yugoslavian Embassy in D.C. This is a standard procedure in Amnesty International.

Thank you.

Mr. EDWARDS. Thank you very much, Mrs. Grady.

[The prepared statement of Ms. Grady follows:]

PREPARED STATEMENT OF PHYLLIS GRADY, HAVERTOWN, PA

My name is Phyllis Grady. I reside at 567 Kathmere Road, Havertown, Pennsylvania. I am 59 years old and I work as a librarian in an elementary school in Radnor Township, PA. I have been a member of Group 216 of Amnesty International U.S.A. since 1984. The following is a description of my contact by the F.B.I. in May, 1989.

On Monday, May 22, 1989, I returned home from a week-end trip about 3:30 P.M. and found a note that had been placed between the front door and the storm door. It was written on a sheet of yellow legal-size paper and had my name and address at the top. The message read: "Please give me a call so I can arrange a time to talk with you. There is no problem; I need some information. Thank you. (signed) Donna Kibbie, F.B.I.-Newtown Square Office, 353-4500."

I called immediately but Ms. Kibbie was not in the office; tried again the next morning with the same result. Finally Ms. Kibbie reached me at home that afternoon, said she could not discuss the matter with me on the phone and needed to speak directly to me. Since my work hours did not seem to allow a time when I could go to the F.B.I. office, Ms. Kibbie asked if she could come to my place of work. Since there seemed no other way of handling her request for a meeting, I agreed to have her come to my work place the next day at lunch time, at about 12:15.

Ms. Kibbie arrived promptly the next day, Wednesday, May 24, and we went into the small Study Room of the library. After showing me her identification, Ms. Kibbie said that she was with the foreign espionage section of the F.B.I. and was contacting me because my name was on a list at the Yugoslavian embassy. I asked how she acquired this information but she evaded the question mentioning only the recording of license numbers. I explained that I had never been to the Yugoslavian embassy nor had I visited Yugoslavia. Ms. Kibbie said that the F.B.I. was contacting people who might be recruited to spy for them, i.e., for the countries whose embassies had been contacted.

I explained that as a member of Amnesty International I often send letters to members of foreign governments on behalf of prisoners of conscience and routinely send copies of the letters to the country's embassy in Washington, D.C. Ms. Kibbie did not seem to know about the work of Amnesty International and listened with some interest to my description of our activities. This conversation lasted fifteen to twenty minutes, and Ms. Kibbie left. She was pleasant and polite during the entire visit.

The effect of this whole experience was to make me feel extremely uneasy that the F.B.I. would come directly to my home and work place as if I were under surveillance and even my phone might be tapped. Other members of Group 216 expressed the same uneasiness, and I must confess that I am extremely concerned that this activity of the F.B.I. may hamper our efforts to enlist people in our work.

Attached to this report is a copy of Donna Kibbie's note and a typical A.I. monthly mailing, Freedom Writers, with the addresses of embassies at the bottom of each sample letter.

Phyllis Grady
June 21, 1989

5/22/89

Mrs. Phyllis Grady
567 Katharine

Please give me a call so I can arrange
a time to talk with you. There is no problem;
I need some information. Thank you.

Donna Kibbie
FBI - Newtown Square Office
353-4500.

Mr. EDWARDS. The next witness is from Phoenix, AZ, and is a firefighter there, Mr. Harold Pickering. We welcome you and you may proceed, Mr. Pickering.

STATEMENT OF HAROLD PICKERING, PHOENIX, AZ

Mr. PICKERING. Thank you, Mr. Chairman.

When I wrote this testimony I made references to a letter from our city director of Amnesty International, Pat Gerencser, Group 110. I had sent her a note about what had happened to me and then she wrote a letter to a John Finerty. So when I was asked to rewrite the account of what had happened to me, I was trying to find that original note that I sent to her and all she could find was the letter that she had sent to Mr. Finerty. So it might sound kind of strange as I refer to that letter in here.

Just after the incident I had contacted Pat Gerencser who asked me to write a memo on what had happened and send it to her. I think she sent a copy of my letter as well as one of her own to Mr. John Finerty of the Helsinki Commission, dated July 16, 1987. As I tried to reassemble what took place I had to rely on my memory and a diary that I keep. Pat was unable to find my original letter, but I think you have a copy. This is a letter to James O'Dea.

To begin with, I am a Phoenix firefighter and I have been with the department for over 15 years. I can't recall when I became involved with Amnesty International, but I think it was 3 or 4 years ago. I was interested in their work and thought that if I could help some prisoner of conscience by writing a letter to his captors, I would do so. I didn't attend many of the meetings because I didn't feel like I had much to contribute to the discussions, but I have always written the letters that they have asked for in their newsletters.

On March 30, 1987, I was at work at Phoenix Fire Station No. 11. It got a call from a Tom Alston who identified himself as an FBI agent. He said he needed to talk with me about something important but he would not say over the phone what the matter was. I think I asked what type of matters he worked with and he said he worked with the area of national security. He wouldn't say anything more, but we did agree on a time to meet at my house.

While I was on the phone with him I wrote a note to my captain, who was standing by the desk, that the caller was from the FBI. After I got off the phone the entire station began to haze me as to what sort of trouble I might be in with the FBI. One man on the shift that follows ours—I'm on C shift and he was on A shift—thought that I was a Communist or something, and I had to keep guessing that this whole thing involved my letters for Amnesty International.

My wife thought that it was strange that they contacted me at work and she thought that perhaps the FBI wanted us to spy on someone for them. I still don't know how or why they contacted me at work.

On April 1st the agents came to my house. Some of the guys at work thought that since they had decided to come over on April 1st that this might be an April Fool's prank by a couple of firefighters. I suggested this to the agents when they came to the door and they

presented their badges. They came in after I invited them and they asked if I had sent or received any communication from the Soviet Union. I replied "yes."

I told them right away that my letters were merely letters for Amnesty International and Letters for Liberty that are featured in the Phoenix Gazette. The first letter that I could think of that I had sent to the U.S.S.R. was for Irina Ratushinskaya. I even had a newspaper clipping on her release that I had saved in my diary on December 18, 1986. I showed them the article and picture as well as one of the Amnesty International newsletters. At that time I had forgot that we had been writing letters for Alexander Ogorodnikov. The agents had been very polite the entire time and said that such letters were fine and to continue the effort.

As I reviewed Pat Gerencser's letter to Mr. Finerty concerning the FBI visit to my house, I couldn't recall what I had written to her concerning various instances in the conversation I had with the agents. Without seeing the letter that I had sent to Pat at the time, I can't recall why her letter stated that the agents didn't know about Amnesty International. Perhaps I was surprised that they didn't guess that these letters to the U.S.S.R. were Amnesty International in the first place.

Next I asked why they were concerned, and they replied that they thought that a Soviet agent might try to use a letter like this to, for instance, "We'll do you a favor if you do us a favor." I told them that I had never heard back from anyone that I have sent Amnesty International letters to but years ago I received a letter back from the Soviet Embassy that basically said that they had nothing to do with the internal affairs of their country.

Again, without seeing my original letter, I can't recall the FBI agents actually saying that they were compiling a list of letter writers, but my diary does say "They did ask a little about other Amnesty folks, I guess so they could eliminate other foreign letter writers from their suspect list."

I can recall that they had a note pad, but I don't know if I asked to see it. I would have to see the original letter. And I don't know what the writing was that Pat mentioned in her letter. There was some discussion in her letter that she thought that the FBI agents would not allow me to see what they had written on their note pad.

As I said, I didn't know if anyone else had been contacted by any foreign agents and suggested that they call Pat. They asked if I had a list of other members of the Phoenix Amnesty International group. I didn't.

The agents were satisfied and they left. The hazing continued for months at work and it became a station joke that I was investigated by the FBI. It was not a problem to me, but I had to tell the story over and over.

Mr. EDWARDS. Thank you very much, Mr. Pickering.

[The prepared statement of Mr. Pickering follows:]

STATEMENT OF HAROLD PICKERING
BEFORE THE
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

June 21, 1989

To begin with, I am a Phoenix Firefighter and have been with the department for over 15 years. I can't recall when I became involved with A.I. but I think it was 3 or 4 years ago. I was interested in their work and thought that if I could help some prisoner of conscience by writing a letter to his captors, I would do so. I didn't attend many of the meetings because I didn't feel like I had much to contribute to the discussions but I have always written the letters that they have asked for in their newsletters.

On March 30th, 1987, I was at work at Phoenix Fire Station # 11. I got a call from a Tom Alston who identified himself as an F.B.I. agent. He said he needed to talk with me about something important but he would not say over the phone what the matter was. I think I asked what type of matters he worked with and he said he worked in the area of national security. He wouldn't say anything more but we did agree on a time to meet at my house. While I was on the phone with him, I wrote a note to my Captain, who was standing by the desk, that the caller was from the F.B.I. After I got off the phone the entire station began to haze me as to what sort of trouble I might be in with the F.B.I. One man on the shift that follows ours thought that I was a communist or

something, and I had to keep guessing that this whole thing only involved my letters for A.I.

My wife thought that it was strange that they contacted me at work and she thought that perhaps the F.B.I. wanted us to spy on someone for them. I still don't know how or why they contacted me at work.

On April 1st, the agents came to my house. Some of the guys at work thought that since they had decided to come over on April 1st, that this might be an April Fool's prank by a couple of firefighters. I suggested this to the agents when they came to the door and they presented their badges. They came in after I invited them and they asked if I had sent or received any communication from the Soviet Union. I replied "Yes".

I told them right away that my letters were merely letters from A.I. and Letters for Liberty that are featured in the Phoenix Gazette. The first letter that I could think of that I had sent to the U.S.S.R. was for an Irina Ratushinskaya. I even had a newspaper clipping on her release that I had saved in my diary on December 18th, 1986. I showed them the article and picture as well as one of the A.I. newsletters. At that time I had forgot that we had been writing letters for Alexander Ogorodnikov. The agents had been very polite the entire time and said that such letters were fine and to continue the effort.

Next, I asked why they were concerned and they replied that they thought that a Soviet agent might try to use a letter like this, for instance, "We'll do you a favor if you do us a favor." I told them that I had never heard back from anyone that I have

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sent the A.I. letters to but years ago I received a letter back from the Soviet Embassy that basically said that they had nothing to do with the internal affairs of their country.

In my diary, I wrote at the time "They did ask a little about other Amnesty folks, I guess so they could eliminate other foreign letter writers from their suspect list." I can recall that they had a note pad. I said I didn't know if anyone else had been contacted by any foreign agents and suggested that they call our group coordinator. They asked if I had a list of the other members of the Phoenix A.I. group. I didn't.

The agents were satisfied and they left. The hazing continued for months at work, and it became a station joke that I was investigated by the F.B.I. It was not a problem to me but I did have to tell the story over and over.

The last member of the panel to testify will be Ms. Martha McKnight of Plainfield, IN. Ms. McKnight, we welcome you.

STATEMENT OF MARTHA McKNIGHT, PLAINFIELD, IN

Ms. McKNIGHT. Thank you, Mr. Chairman.

My name is Martha McKnight, and I am from Plainfield, IN. I am employed as a reference librarian at the Indianapolis Public Library.

On December 13 of last year I received a phone call at my place of work from a person who identified himself as an FBI agent. He said someone in my family had been in touch with the Bulgarian Embassy in Washington, DC, and he was making inquiries about this. I was, to the say the least, startled by the call. I could not immediately recall what might have prompted it. The agent suggested that we meet, and I made an appointment for him to come to the library in the afternoon.

By the time I hung up it had occurred to me that the communication in question was undoubtedly one of the letters that I write regularly as part of Amnesty International USA's Freedom Writers project. Since 1986 I have written three letters every month to heads of governments around the world on behalf of prisoners of conscience. I send copies of these letters to the Washington embassies of each country and to my Indiana Senator, Richard Lugar.

Later I did check my files and found that in July 1988, I had written to the Chairman of the Bulgarian State Council on behalf of an ethnic Turk who was imprisoned in 1985 because he refused to change his Turkish name to a Bulgarian one.

Before my scheduled appointment I phoned the office of the Indiana Civil Liberties Union to ask their advice. I understood that I was not under obligation to answer any questions and it was suggested that I could verify the identity of the agent by calling the local FBI office, which I did.

I also asked a colleague of mine who was free at that time to sit in on the interview since I felt it would be a good idea to have a witness.

Although I was indignant at this interference by the FBI, I decided I would explain my participation in the Freedom Writers project.

The interview lasted about 15 to 20 minutes. The agent readily agreed to the presence of my colleague. At the outset I told him about the Freedom Writers project, but he chose to engage in a rambling discourse before writing down any notes.

Among the topics he addressed were the important intelligence functions performed by the FBI; the careful guidelines observed by the FBI in contrast to foreign intelligence services; the advantage that foreign, in other words, Communist, spies have because of the United Nations in New York City; his own patriotism and his observation of SDS radicals at a San Diego university in the 1960's.

My colleague mentioned the FBI's Library Awareness Program in which the FBI has been asking library employees to report the activities of "suspicious foreigners" who use libraries, an action which would be a gross violation of library ethics and respect for intellectual freedom.

My interviewer professed not to know much about the issue and asked me what I knew, to which I replied that the FBI was trying to recruit librarians as informers. He obviously did not like my choice of words and commented that he would not have any objection to anyone knowing what he read.

Curiously, most of this conversation was directed to my male colleague, but the agent finally turned to me to ask again just what this letter writing project was. He took some brief notes and then asked if I had any questions.

I asked how the FBI had obtained the letter, and he professed not to know; he had just been given the assignment to inquire. I asked him why he had contacted me instead of some other member of my family, since I judged from the initial phone conversation that he was not sure which member of my family was under suspicion, probably because the address labels I use have only the family name "McKnight." He declined to explain or to tell me how he had tracked me down to the library. "That is one thing the FBI is good at," he observed.

This concluded the interview.

Since that date I have written two more letters to Bulgarian authorities on behalf of prisoners of conscience. I have sent copies to the Bulgarian Embassy and to Senator Lugar. If I hear again from the FBI, I plan to be more open about my anger and indignation at their intrusion in my personal affairs. I want to tell the agent that these inquiries can be intimidating and offensive. I will express my concern that contacting a person at her place of work could lead to unpleasant consequences because of misunderstanding or rumor. If neighbors were contacted to determine my place of employment, the same disturbing results are possible.

I value very highly the liberties and responsibilities promised to us by our Constitution and I am outraged at what I perceive to be a growing attempt to circumscribe them in the name of national security.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Ms. McKnight. That is very helpful testimony.

[The prepared statement of Ms. McKnight follows:]

STATEMENT OF MARTHA MCKNIGHT

Before the

Subcommittee on Civil and Constitutional Rights

June 21, 1989

My name is Martha McKnight, and I reside at 1017 Kirkwood Drive, Plainfield, Indiana. I am employed as a reference librarian in the Social Sciences Division of the Indianapolis-Marion County Public Library in Indianapolis, Indiana.

On December 13, 1988 I received a phone call at my place of work from a person who identified himself as an FBI agent. He said someone in my family had been in touch with the Bulgarian Embassy in Washington, D.C. and he was making inquiries about this. I was, to say the least, startled by the call, and could not immediately recall what might have prompted it. The agent suggested that we meet, and I made an appointment for him to come to the library in the afternoon.

By the time I hung up it had occurred to me that the communication in question was undoubtedly one of the letters that I write regularly as part of Amnesty International U.S.A.'s Freedom Writers project. Since 1986, I have written three letters every month to heads of governments around the world on behalf of "prisoners of conscience." I send copies of these letters to the Washington embassies of each country, and to my Indiana senator, Richard Lugar. Later I checked my files and found that in July of 1988 I had written to the chairman of the Bulgarian State Council on behalf of an ethnic Turk who was

imprisoned in 1985 because he refused to change his Turkish name to a Bulgarian one.

Before my scheduled appointment, I phoned the office of the Indiana Civil Liberties Union to ask their advise. I understood that I was not under obligation to answer any questions, and it was suggested that I could verify the identity of the agent by calling the local FBI office, which I did. I also asked a colleague who was free at that time to sit in on the interview, since I felt it would be a good idea to have a witness.

Although I was indignant at this interference by the FBI, I decided that I would explain my participation in the Freedom Writers project.

The interview lasted about 15 - 20 minutes. The agent readily agreed to the presence of my colleague. At the outset I told him about the Freedom Writers project, but he chose to engage in a rambling discourse before writing down any notes. Among the topics he addressed were the important intelligence functions performed by the FBI; careful guidelines observed by the FBI in contrast to foreign intelligence services; the advantage that foreign (i.e. Communist) spies have because of the location of the United Nations in New York City; his own patriotism and his observations of SDS radicals at a San Diego university in the 60's. My colleague mentioned the FBI's "Library Awareness" program (in which the FBI has been asking library employees to report the activities of "suspicious foreigners" who use libraries, an action which would be a gross

violation of library ethics and respect for intellectual freedom.) My interviewer professed not to know much about the issue, and asked me what I knew, to which I replied that the FBI was trying to recruit librarians as informers. He obviously did not like my choice of words, and commented that he would not have any objection to anyone knowing what he read!

Curiously, most of this conversation was directed to my male colleague, but the agent finally turned to me to ask again just what this letter-writing project was. He took some brief notes, and then asked if I had any questions. I asked how the FBI had obtained the letter, and he professed not to know; he had just been given the assignment to inquire. I asked him why he had contacted me instead of some other member of my family (since I judged from the initial phone conversation that he was not sure which member of the family was under suspicion, probably because the address labels I use have only the family name, "McKnight.") He declined to explain or to tell me how he had tracked me down to the library. "That is one thing the FBI is good at," he observed.

This concluded the interview.

Since that date, I have written two more letters to Bulgarian authorities on behalf of prisoners of conscience, and I have sent copies to the Bulgarian Embassy and to Senator Lugar. If I hear again from the FBI, I plan to be more open about my anger and indignation at their intrusion in my personal affairs. I want to tell the agent that these inquiries can be intimidating

and offensive. I will express my concern that contacting a person at her place of work could lead to unpleasant consequences because of misunderstanding or rumor. If neighbors were contacted to determine my place of employment, the same disturbing results are possible.

I value very highly the liberties and responsibilities promised to us by our Constitution, and am outraged at what I perceive to be a growing attempt to circumscribe them in the name of national security.

Mr. EDWARDS. One of our scheduled witnesses has been fogged in all day at the airport in Westchester County, Prof. Paul Josephson, a Soviet studies scholar at Sarah Lawrence College in Bronxville, NY. It is too bad he couldn't make it in time since he is not an Amnesty member and we wanted to have him testify to illustrate the point that the FBI's program is not limited to Amnesty members.

Professor Josephson will be submitting his statement which will be made part of the record, without objection.

We do have copies of an op-ed piece that he wrote about his experience, and that is available at the press table and without objection, that will be made a part of the record.

[The prepared statement and newspaper article of Mr. Josephson follow:]

Statement Prepared for the
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U. S. House of Representatives

June 21, 1989

Paul R. Josephson

I am a professor of science and society at Sarah Lawrence College and adjunct associate professor of political science at Columbia University both in New York state. I have served as a consultant to the congressional Office of Technology Assessment. My speciality is the history and politics of Soviet physics. I have been to the USSR twice on the IREX/Fulbright Hays programs for extended research trips, and will be going to Moscow, Leningrad, and Novosibirsk this fall for four months through the National Academy of Sciences to visit a number of Soviet physics establishments.

A personal experience, a request from the FBI to help gather information on Soviet scientists, led me to consider the appropriate relationship between government intelligence gathering agencies and academia. American universities and colleges are founded on the notions of the free exchange of ideas and the absence of prior censorship. This gives them their vitality and ensures leadership in fields ranging from semi-conductor physics to biotechnology and social science research. Recently, however, there have been inroads on academic freedom in three major ways: pressure on academics to serve intelligence purposes, attempts to place restrictions on access to laboratories and libraries, and prior censorship of research results.

In my case, the intrusion on academic freedom concerns the discipline of the history of science, and my refusal to provide information I might have on "certain scientists" for the FBI. As a specialist on Soviet science and technology, I have established a number of regular contacts with Soviet scientists representing such fields as low temperature, elementary particle, nuclear, and plasma physics. I am given the opportunity to pursue my research by the Soviet government precisely because I am a college teacher and not an intelligence agent. I work only with open and unclassified sources, and the results of my research are published in journals accessible to all readers.

As I explained to the agent who called me, I will not serve intelligence purposes because it would damage my standing as an independent researcher by raising questions about the purposes of my work. The agent would not divulge the intent of his contact with me over the phone for fear of "putting in danger one of our sources." At the same time, he did not hesitate to put my standing in jeopardy among Soviet scientists by asking me to provide information on some of them. A response by an FBI official to my November 1, 1988, op-ed piece in the New York Times says that the FBI hoped to use my assistance in "foreign counterintelligence" to help identify "foreign national spies." After an increasingly heated discussion in which the agent refused to take my "no" for an answer, he tried to coerce my compliance by informing me that he would "put a letter in your file which describes your refusal to cooperate," although admitting that "this is a free country."

If I were not confident of the proper relationship between a small college teacher and security agencies, I might have become sufficiently frightened to cooperate to avoid some unwelcome addition to my file. But I know that I can gain access to any files the government has on me through the Freedom of Information Act. I have grave concern, however, that some individuals may feel compelled to participate in intelligence gathering activities under cryptic threats of additions to files. This type of pressure is nothing new, but taken together with other inroads into academic freedom in the name of national security represents a narrow view of the importance of academic freedom.

The government has also attempted to intervene directly in a number of cases to secure prior censorship of unclassified research results. While to my knowledge none has been censored to date, publication has been held up in a number of instances, and the likelihood of self-censorship has been increased many-fold. Other assaults on academic freedom concern the recent efforts to restrict access of foreign nationals to laboratory facilities or to have librarians serve as censors or intelligence gathering organizations in an FBI program known by the innocuous name of the "Library Awareness Program."

Attempts to restrict the flow of material may slow the dissemination of sensitive information to foreign governments or industries, but through this practice we run the even greater risk of slowing down our scientific and technological progress by censorship of fundamental research. In fact, one of the weaknesses of Soviet science and technology is the obsession with secrecy and censorship of western periodicals, both of which retard the dissemination of information. The recent

renewal of a number of scientific-technological exchanges with the USSR is confirmation of the fact that some US government officials recognize the importance of easing restrictions and limiting intelligence gathering to the appropriate spheres.

I should point out that I believe that other scholars have the right to cooperate with the FBI or to chose how their research is used. Nevertheless, I would hope that the government does not condone threatening behavior on the part of its security agents: that it will learn to respect the wishes of those who chose not to serve intelligence purposes; and that it recognizes it jeopardizes their standing when it does not respect their wishes.

I would like to thank the committee members for the opportunity to speak with you.

The F.B.I. Menaces Academic Freedom

11/1/88 NYT
By Paul R. Josephson

Iresent the Reagan Administration's efforts to compromise scholars' professional reputations.

In the last eight years, the Administration has pressed scholars, myself included, to abandon academic freedom in the name of national security in three ways: pressure to serve intelligence purposes, attempts to place restrictions on access to laboratories and libraries and prior censorship of research results.

In my case, the intrusion into academic freedom concerns my refusal to comply with a request by the Federal Bureau of Investigation to provide information on certain Soviet scientists.

As a specialist in the history of Soviet science and technology, I have visited the Soviet Union twice. Several research visits and joint seminars are in the offing there. I have established contacts with a number of Soviet scientists in such fields as low-temperature, elementary-particle, nuclear and plasma physics.

The Soviet Government enables me to pursue my research precisely because I am a college teacher and not an intelligence agent. I work only with open and unclassified sources, and the results of my research are published in journals accessible to all readers.

I explained to the F.B.I. agent who called me that I would not directly serve intelligence purposes, although I have no control over how my published work is used. Meeting with any intelligence official could damage a scholar's standing as an independent researcher by raising questions about the purposes of his research.

The agent would not divulge the intent of his contact with me over the telephone for fear of "putting in danger one of our sources." At the same time, he did not hesitate to put my standing in jeopardy among Soviet scientists by asking me to provide information on some of them.

While admitting that "this is a free country," he nonetheless tried to coerce me into complying by informing me that he would "put a letter in your file which describes your refusal to cooperate."

If I were not confident of the proper relationship between a teacher in a small college and Federal security agencies, I might have become sufficiently frightened and cooperated to

avoid some unwelcome addition to my file. But I know I can gain access to any files the Government has on me through the Freedom of Information Act.

I have grave concern, however, that some individuals may feel compelled to participate in intelligence gathering activities under such cryptic threats of additions to Government files. This pressure is nothing new, but, taken together with other inroads into academic freedom in the name of national security, it represents a narrow view of the importance of academic freedom.

The Administration has attempted to intervene to obtain prior censorship of unclassified research results. One such case involved the attempt of the National Security Agency to hold back publication of applied mathematics papers on cryptography.

Facing significant opposition, the N.S.A. agreed to ask for voluntary submission of papers for screening. While, to my knowledge, none has been censored, publication has been held up in a number of instances and the likelihood of self-censorship has been increased.

Other assaults on academic freedom involve recent efforts to restrict access of foreign nationals to such laboratory facilities as supercomputers and to have librarians serve as censors or intelligence gatherers in an F.B.I. program known by the innocuous name of the Library Awareness Program.

University administrators and researchers agree that attempts to restrict the flow of information may slow the dissemination of sensitive information to foreign governments or industries. But they also recognize that we run the even greater risk of slowing down our scientific and technological progress by censoring fundamental research. One weakness of Soviet science has been the state's obsession with secrecy and the censorship of Western periodicals.

I hope that the Reagan Administration — and its successor — will not condone threatening behavior by its security agents, that it will learn to respect the wishes of those who choose not to serve intelligence purposes and that it recognizes that it jeopardizes their standing when it does not do so.

Yes, some of these policies have been pursued under past Administrations, and close contact between the Government and some academics for intelligence purposes dates to World War II. But the Reagan Administration's zealous attempts to make inroads on academic freedom threatens to undermine the strength of American research. □

Paul R. Josephson, a specialist in the history of Soviet science and technology, teaches at Sarah Lawrence College.

Mr. EDWARDS. It occurs to me that none of these agents knew of the existence of Amnesty International and the letter writing program; is that correct?

I don't know if anybody finds that as strange as I do. What about it, Mr. Hoffman?

Mr. HOFFMAN. I think that many agents have not known about it, but some agents have been aware of Amnesty's work. We clearly have to do more outreach to the FBI community from that standpoint.

Mr. EDWARDS. It doesn't say too much for the training of the FBI. That is something they should be very alert to.

Mr. HOFFMAN. One of the reasons that we are asking that a directive be sent explaining our work is to promote that kind of understanding. We think that might be helpful in these situations.

Mr. EDWARDS. It also occurs to me that the agents vary in their approach. The one who interviewed you, Ms. McKnight, sort of lectured you on patriotism; isn't that correct?

Ms. MCKNIGHT. Yes, that is correct.

Mr. EDWARDS. The Library Awareness Program has been mentioned here several times. We did look into that in some depth. The FBI didn't have any guidelines at all when they started out. None. A couple of lines. We asked for them and they sent us a couple of sentences. Since then very strict guidelines have been put into effect and since those guidelines have been in effect, in all candor, we have not received any complaints. So I think your testimony today makes it very clear that we certainly need some guidelines.

That was not too great an experience that our firefighter friend from Phoenix had. Since then you have been hazed at the fire house. I don't imagine that all of it is entirely pleasant since some of them are suggesting that you might be a Communist or something.

Mr. PICKERING. I have had to tell this story so many times to so many guys. There are like a thousand members on the Phoenix Fire Department. The story has gotten around that it did just concern Amnesty International letter writing. But some of the firefighters have been in trouble for a lot worse stuff. They were associating my visit by the FBI with the criminals on the job.

Mr. EDWARDS. Thank you. I am going to yield in a moment to Mr. Sensenbrenner for questions, but first, we welcome the gentleman from Wisconsin, Mr. Kastenmeier. Do you have a statement, Mr. Kastenmeier?

Mr. KASTENMEIER. I want to congratulate you, Mr. Chairman, for holding these hearings. I think they are very important. However, at this time, I do not have any questions.

Mr. EDWARDS. Thank you, Mr. Kastenmeier.

The gentlewoman from Colorado, Mrs. Schroeder.

Mrs. SCHROEDER. Let me join the gentleman from Wisconsin in thanking you for having these very, very important hearings. Especially after the whole incident that went on in China, I think we understand how important human rights are. Let me salute these very brave souls for having been involved in that. We appreciate your being here today.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I guess this is somewhat of a sympathetic forum, because Mr. Edwards and I will plead guilty not only to writing letters to the chairman of the Bulgarian State Council, but we actually visited him on a congressional delegation in 1983 and complimented him for giving us some very delicious cognac produced in Bulgaria.

Mr. EDWARDS. At 9 o'clock in the morning.

Mr. SENSENBRENNER. It was at 9 o'clock in the morning.

Just for the record, we brought with us a list of people that were on the representational list of the American Embassy in Sofia, and I think we were successful in persuading Mr. Zhivkov to let all of those people go within a very quick period of time. So there was more business conducted there than the pat on the back for the good cognac.

Mr. Hoffman, it has been historical that upon occasion representatives of Eastern European embassies have been in contact with people who have written them letters and attempted to recruit them to do some work which would not be in the best interest of our country. I think this is one of the reasons why the FBI is always on the alert to see if Eastern European diplomats are trying to coopt or recruit American citizens.

The reports that I have seen have indicated that these instances have become fewer and fewer in number as time has gone on, but I am wondering if you have gotten any information that any Amnesty International member was approached by a representative of an Eastern European embassy as a result of the Amnesty member sending a letter to the embassy and to the head of state asking for the freedom of a prisoner of conscience in that country.

Mr. HOFFMAN. We are unaware of any instance of that kind any time in the history of AIUSA.

Mr. SENSENBRENNER. My gut reaction is that if some American citizen sends a letter to the head of state and a copy to the ambassador criticizing that government's action in incarcerating a prisoner of conscience, the Amnesty member would not be a likely target for recruitment since the letter certainly wasn't sympathetic to the position that the foreign government had taken.

Mr. HOFFMAN. Ordinarily our letters would not give a foreign government the impression that we would be willing to work with them.

Mr. SENSENBRENNER. I have received many copies of letters from Amnesty members in my district. One's command of the English language would have to be very poor in order to get that impression.

Thank you.

Mr. EDWARDS. Mr. Kastenmeier.

Mr. KASTENMEIER. No questions, Mr. Chairman.

Mr. EDWARDS. Mrs. Schroeder, do you have any questions?

Mrs. SCHROEDER. Thank you, Mr. Chairman.

I just wondered if any of you had continued to write letters or if this slowed you down.

Ms. GRADY. My reaction was I really wanted to write more letters after that. I really didn't like having somebody question what I was doing because I thought it was not subversive.

Mrs. SCHROEDER. Did you get letters from other countries questioning why they were questioning you? We almost become a human rights violation in reverse, don't we?

Ms. GRADY. I have had no response to most of my letters.

Mrs. SCHROEDER. Has anybody else felt that it wasn't worth the hassle, especially if you have to answer to all 1,000 firemen?

Mr. PICKERING. I continued to write letters as they were requested by the Amnesty International newsletters that came out, but I always wrote with the feeling that somebody else was reading them before they got to their final destination.

Mrs. SCHROEDER. On our side or on their side?

Mr. PICKERING. On our side.

Mr. HOFFMAN. I should say that there have been some concerns raised by Amnesty members about these kinds of visits that we have received in the national office of Amnesty, although I believe that most people continue to write notwithstanding these kinds of visits. There are a lot of concerns, and I think as an organization we are afraid that it is the people who won't come forward, that we don't know about, who won't join Amnesty, or that we will have difficulty recruiting members that we can't even identify in advance. That is where our concerns are.

People who join Amnesty and work regularly with us tend to be a pretty dedicated lot, I think. It will probably take more than a visit from an FBI agent to stop them from writing on behalf of human rights victims. But we are trying to involve more people in this country in our work. We believe it is important for everybody to be working on behalf of the kinds of human rights victims that we work for, and we think that this kind of program may inhibit people from joining, because the very fact of an FBI visit has a certain connotation, rightly or wrongly, in the community that may discourage people from getting involved. That is really where our main concern is.

Mrs. SCHROEDER. You had that wonderful concert last year that went around the world for human rights, celebrating your anniversary and trying to get many young people, the type who go to concerts involved in letter writing. I would think that this would be a turnoff to a lot of young people because they might be afraid that they would be building some kind of record that could jeopardize their employment later on.

Mr. HOFFMAN. I think that is precisely the concern, that people would have that feeling, whether it is justified or not, and would not join Amnesty or would be discouraged from taking these kinds of actions.

Mrs. SCHROEDER. And nobody comes forward and says that, because it is not cool to say that.

Mr. HOFFMAN. But it is certainly true that people have come forward and expressed that concern, either for themselves or they know about other people that have expressed the concern in their group meetings. So it has really become a big concern for us.

Mr. EDWARDS. If the gentlewoman would yield, it occurs to me that in connection with the guidelines that we are going to try to insist be drawn by the FBI that there ought to be a method for purging so that one's name is not permanently in the files and

likely to come up at some future investigation of someone who had been writing to the Soviets or to a bloc nation; isn't that correct?

Mr. HOFFMAN. Yes. We definitely think that should be part of the consideration that goes into guidelines.

Mrs. SCHROEDER. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Let me put the opposite question to you. Do you think there are some members of your organization who might have welcomed these visits and indeed wanted to talk extensively to the FBI agent who solicits an interview about various things? My point is there may be some members of your organization who don't regard this as intimidating or intrusive. Is that not the case?

Mr. HOFFMAN. I am unaware of anybody who has been visited that has enjoyed the experience. I think the range of reaction varies widely, but no one has thought it was a good thing that the FBI visited them. I think that if we want to reach out to the FBI, as we try to reach out to virtually everybody in this country, we have ways of reaching the FBI with our concerns and trying to enlist them in our work. We would prefer to do it by reaching out to them rather than having them reach out to us in this way.

Mr. KASTENMEIER. In other words, their present practice is offensive to you and your members quite generally, and if they are interested in anything which you could contribute in terms of their knowledge, it ought to be handled quite differently; is that the point?

Mr. HOFFMAN. That is our feeling.

Mrs. SCHROEDER. Would the gentleman yield?

Mr. KASTENMEIER. Yes.

Mrs. SCHROEDER. Do you have any FBI members that are members of Amnesty International?

Mr. HOFFMAN. We certainly don't have a list where we would have that kind of information. We believe that there are people in the FBI that are members of Amnesty and that work with us. I am sure that there are. There are members of Amnesty in almost every walk of life, including the military and the Federal Government and State and local governments. We certainly hope that people within the FBI would want to take action with us on these concerns.

Mrs. SCHROEDER. I think we would all find it very upsetting if they didn't.

Mr. Chairman, maybe one of the things we could do is put a membership drive on at the FBI and they would begin to understand what Amnesty did.

Mr. EDWARDS. The problem might be if they started writing letters to Yugoslavia or Russia, then an FBI agent would visit them and say, "I know you."

Ms. Grady, do you think twice now about sending letters to Amnesty or encouraging your friends to be involved? Do you warn your friends that this might be the implications of them joining Amnesty and writing letters and then getting their names in an FBI file? Does that bother you?

Ms. GRADY. For me, I do not find it a deterrent. I am the head of a little local community group and we are always looking for more

members, the kind that will stay and that will keep writing. And that is difficult. Our group is very small. We range between 5 and 15 at our monthly meetings. That's the kind that stay with the work, because it is not exciting work.

The school district is rather representative of the whole community. I really worry, working in a very conservative community, that the interest will not be as great if they know that I have been approached by the FBI and it will turn a lot of people off, who will say, oh, well, it is one of those "groups." That is a big problem. We are always looking for more hardworking people.

Mr. EDWARDS. Thank you.

Mr. Pickering, do you think that in some fire departments that a firefighter's career might be endangered in any way by hearing from other firefighters that one particular firefighter has been investigated by the FBI?

Mr. PICKERING. I can imagine that during a promotional examination where a certain segment of the process is up to the chiefs. For instance, during the oral interview. It becomes a very subjective part of the promotional process. For instance, in the back of one of the chief's minds or something he is kind of unclear about it. He may think, "Wasn't this guy investigated by the FBI for something?" But he doesn't bring it up. It is something that might nag him and in his subjectivity it might affect someone's promotional opportunity.

Mr. EDWARDS. Thank you.

Ms. McKnight, do you think that the FBI could have handled your interview or any of the others on the telephone?

Ms. MCKNIGHT. Actually, one of the questions the agent who called me asked was whether I had a child in school. Later I thought probably it is because school children have been approached who have written letters for information in relation to school projects. When I told him I didn't and was not forthcoming with a reason why someone had been in touch with the Bulgarian Embassy, he said, well, maybe we had better have a meeting. So my impression was that he would have cleared it up over the phone. I rather wanted to see him face to face and clear it up that way rather than leaving it on the phone.

May I add another story that relates to your question about employment and intimidation? When I told my story to some of my friends at the library I found out that another librarian in our system had been approached this last fall. So I called her and asked her more about it.

She had in the fall of 1987 written to a number of embassies asking for information. She wanted to put up a bulletin board display on Christmas customs. I guess she didn't get much of a response and nothing came of that.

A year later, in the fall of 1988, an FBI agent showed up at the library with no warning and wanted to talk with her. He questioned her extensively about her contact, I believe with the Czechoslovakian Embassy, what she had done, what their response was, and if she going to contact them again, would she let them know if she did, and so on.

She couldn't remember for a while what had prompted this. Her comment to me later was that she was not only shaken by the ex-

perience. She said she had applied for a position with the Department of Defense as a librarian, I guess, and had not heard. She was concerned that perhaps the fact that she had been interviewed by the FBI might have some relationship to her employment possibilities.

Sometimes I try to get my friends at the library to write letters as well. In a sense I think librarians are great civil rights activists. I think I am more of a hero than anything else as far as many of my friends at the library, but I do wonder whether the fact that they might be subjected to this would mean that they would prefer not to get involved.

Mr. EDWARDS. That is very helpful. When we have the FBI testifying very soon that is one of the questions we are certainly going to ask them, what kind of a file is created or what kind of a record is created when these interviews are conducted, and whether or not in an employment check for a confidential position or for a security check this information is transmitted to the investigating FBI agent and if that must necessarily go into the report to the prospective employer or to the body that has charge of the clearance or nonclearance of the security matters.

This all has been very helpful to us and we are in a much better position to talk to the FBI after hearing you witnesses.

Are there any further questions?

[No response.]

Mr. EDWARDS. We thank you very much. You have been very helpful. You got through just in time for the vote on the floor of the House, and I am sure that everybody is very grateful. You have made a fine contribution. Thank you.

[Whereupon, at 2 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

FBI INVESTIGATION OF FIRST AMENDMENT ACTIVITIES

(The Status of GAO's Review of the FBI's International Terrorism Program)

THURSDAY, JUNE 22, 1989

**HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.***

The subcommittee met, pursuant to notice, at 11:24 a.m., in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Don Edwards, Geo. W. Crockett, Jr., F. James Sensenbrenner, Jr., and Craig T. James.

Also present: James X. Dempsey, assistant counsel, and Colleen Kiko, minority counsel.

Mr. EDWARDS. The subcommittee will come to order.

The Chair regrets the delay. It was caused by an election in the Democratic caucus that I had to attend, because we had Congressman Vic Fazio of California running for vice chair of the caucus and he won on the second ballot.

This morning the subcommittee will receive an interim report from the General Accounting Office on its audit of the FBI's International Terrorism Program.

The audit is being undertaken in response to a request I made last year in the wake of the revelation that the Bureau's CISPES investigation had been overbroad and unfocused. In my letter to the Comptroller General requesting the audit, I asked the GAO to determine whether the FBI is opening investigations on U.S. citizens and organizations without at least a suspicion of criminal conduct. I also asked the GAO to determine whether in its international terrorism investigations the FBI is collecting information on demonstrations, meetings, protests, and other legitimate political activity.

The GAO faced considerable difficulty in getting access to even the closed files of the FBI. This raises serious questions about the viability of the oversight process. If GAO auditors, who have top secret clearances and who work in the FBI building itself, cannot review FBI files in a timely fashion, how can Congress ever know what the FBI is doing? However, in this case the GAO staff was tenacious and the study is now on track.

So we do not want to focus only on the past history of the audit. The GAO expects to finish its report in the fall, and I want to ensure that the report is useful to the Congress and I want to make sure the GAO audit is covering the necessary issues and asking the right questions. We also want to address the open cases question, since I feel that some information on open cases will be necessary to resolve the issue that this audit was supposed to address.

To summarize the status of the GAO report, we are pleased to welcome our witness, Arnold Jones, Director of Administration of Justice Issues at the GAO. Mr. Jones has supervised a number of projects for the subcommittee and his commitment and insight have always proven most valuable.

At this time I would also ask unanimous consent to insert in the record the opening statement of the ranking minority member, the gentleman from Wisconsin, Mr. Sensenbrenner.

[The prepared statement of Mr. Sensenbrenner follows:]

STATEMENT OF F. JAMES SENSENBRENNER, JR.

FBI INTERNATIONAL TERRORISM PROGRAM

JUNE 22, 1989

I would like to welcome Director Jones to the Subcommittee's hearing today.

It appears that the GAO now has most of the documents which they have requested and are now in the process of reviewing the case files which were identified as a result of their questionnaires. I would like to raise a caution about relying on any of the figures set forth in today's testimony, however, especially since they, no doubt, are based on a quick "look-see" on the case files to get some figures put together for this hearing. I will await the final figures, after a thorough review of the case files by the GAO, before placing any significance on the numbers.

I would like to remind those here today that the time period covered by the audit by GAO arose close in time to three bombing incidents in Washington, D.C., one of which in November 1983 took place in the Capitol itself. As Director Sessions of the FBI told this Subcommittee on September 16, 1988, it came not long after a period in which there were sometimes over 100 terrorist incidents annually in this country and Puerto Rico and at a time when the Subcommittee on Security and Terrorism of the Senate Judiciary Committee was urging the Bureau to investigate groups suspected of terrorist activity and expostulating when the Bureau did not. The Counter-terrorism Program designed by the FBI to

respond to those realities was, and continues to be, highly successful. A decade ago, Congress recognized the need for intelligence gathering when, in passing the Foreign Intelligence Surveillance Act of 1978, it noted: "While luckily the United States has heretofore been spared from the worst cases of international terrorism, a lack of intelligence concerning it may, as other countries crack down, present the United States as an inviting target." Over the past several years, the arrest, prosecution and incarceration of key leadership elements of various terrorist organizations have contributed to a steady decline in the number of terrorist incidents committed in the United States. I am pleased to note that on April 5, 1989, when the Director of the FBI testified before this Subcommittee Director Sessions noted that in 1986, the FBI recorded 25 terrorist incidents. This number declined to nine in 1987, and seven in 1988.

I want to thank Director Jones for being here today, and I look forward to hearing the testimony.

Mr. EDWARDS. I recognize the gentleman from Michigan, if he desires to make any statement.

Mr. CROCKETT. No statement, Mr. Chairman.

Mr. EDWARDS. Thank you.

We welcome the witnesses.

[Witnesses sworn.]

Mr. EDWARDS. Mr. Jones, will you identify your colleagues and proceed.

STATEMENT OF ARNOLD P. JONES, DIRECTOR, ADMINISTRATION OF JUSTICE ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE, ACCOMPANIED BY JOHN ANDERSON, ASSISTANT DIRECTOR, AND TIM OUTLAW, GAO EVALUATOR

Mr. JONES. Mr. Chairman, to my immediate right is Mr. John Anderson, who is my Assistant Director for addressing issues related to the Federal Bureau of Investigation, and to my immediate left is Mr. Tim Outlaw, who is the evaluator in charge of the particular study requested by the subcommittee.

I am very pleased to be here today, Mr. Chairman, as you know, to discuss where we stand as of today in our review of the FBI's International Terrorism Program.

As a little background, on March 8, 1988, more than 15 months ago, you asked us to review the FBI's International Terrorism Program. You were concerned that the FBI's international terrorism investigation of the Committee in Solidarity with the People of El Salvador was overly broad and not properly focused. You wanted us to review the FBI's other international terrorism cases to determine if the CISPES investigation was an aberration. Specifically, you wanted us to determine the basis on which the FBI initiates international terrorism investigations, the scope and results of these investigations, and whether the FBI monitors first amendment activities—for example, speeches, marches, demonstrations, et cetera—when making such investigations.

To respond to your request, we agreed with the subcommittee to select a random sample of cases closed—that is, no longer under active investigation, no longer being actively pursued—cases closed from January 1982 to June 1988. We were to have FBI agents fill out questionnaires on the cases. Using questionnaire results, we are randomly selecting cases for detailed review.

Now, the purpose for the questionnaire was purely and simply—and I'm going to deviate from my submitted statement just a second because I think it's important. Identifying the universe of international terrorism cases is very large. We have limited staff and we have limited time; that is, we didn't have forever. So we wanted to have a mechanism for first deciding from among all the international terrorism cases which ones were likely to contain material germane to the request, so we used an overall questionnaire that was sent out to all 59 FBI field offices for purposes of identification.

Using those questionnaire results, then, we were going to select specific cases that we would then use to get detailed and specific

answers to your questions. We would use those questionnaires to identify a subsample of case files that we would want to go into.

It is very important for the record to say that the universe of cases were closed cases. We had some instances—and I'll get to it later—that were cases identified as closed and were subsequently opened, reopened. Some cases identified as closed, were subsequently found to be in error—that is, they were not closed. But we'll get into that. It is important to recognize that these are interim results.

Our progress in responding to your request, as you know, has been slow, primarily because of delays in obtaining requested information and access to closed case files. We had numerous meetings and correspondence with FBI officials, and we have now received responses from almost all of our questionnaires and are finally receiving copies of redacted—that is, edited—files for closed cases.

Now, for purposes of the record, why redaction? Why do they have to be edited? Because as part of the process, it makes sense—and the General Accounting Office agreed many years ago, and the FBI insisted—that they did not want to divulge the names or identifiers of informants or sensitive investigative techniques and methodologies. I happen to agree that we don't need this for purposes of carrying out our responsibilities to the Congress. We do have some concern as to how much has to be redacted to preserve that amount of material. This is a matter of no small concern on your part and on the part of the General Accounting Office, as well as the FBI.

But the process of editing the case files, to remove material that they feel we shouldn't have, takes time. While the progress has been slow, I have to confess that the officials with whom we have dealt have not been uncooperative.

The remainder of my statement will now summarize the delays we have encountered and some very preliminary observations based on the work we've done to date.

Access has been delayed. That's an assertion that I'm going to justify in a moment. We held opening meetings with FBI officials on March 21, 1988, and through April we reviewed procedures and interviewed FBI headquarters officials about the International Terrorism Program. That's partly to give us background and partly to negotiate the issues that have to be negotiated upon entering into any orderly evaluation of any executive branch agency or program. Our access to information needed to respond to your request has been delayed because it has taken the FBI about 3 months to update its data base of closed investigations which we needed to select our cases for review, as I've already said. It took about 6 months to get the questionnaires for all but 38 of the 1,100 cases we randomly selected, so our sample size was 1,100 from a very large universe. It took several months to review, redact, and provide us with the copies of files received to date.

We talked about incomplete data base. What do we mean? To gain overall knowledge about the FBI's international terrorism investigations, we planned to review a sample of cases. The first step in selecting a sample is to identify the universe of cases. The FBI maintains a computer data base of its international terrorism cases. However, FBI officials said that the data base was incom-

plete because it was not begun until September 1985 and cases completed before then had to be added.

To obtain a complete list of cases, on August 11, 1988, FBI headquarters instructed each of its 59 field offices to update their case information. Each office was to provide FBI headquarters with the updated information within 3 weeks. However, this effort took considerably longer. FBI officials provided us with updated lists of cases for each of its 59 field offices over a 3-month period. The first five lists of closed cases were given to us on September 2, 1988, and the last was given to us on November 18, 1988.

Questionnaire returns were slow. It was sent out by headquarters to FBI field offices. The FBI's updated lists identified about 20,000 international terrorism cases that were closed between January 1, 1982 and June 30, 1988. This is the universe of closed international terrorism cases that I was talking about. We developed that questionnaire that I have mentioned in passing to gain overall profile data on a projectable sample of these cases and also to use as a screening document to select a smaller sample of cases for more detailed review.

Some of the interesting statistical things we did, we designed our sample to produce a sampling error of less than plus or minus 5 percent. The questionnaires were to be completed by FBI field agents based on their review of the case files. The questionnaires requested such information as the name of the subject of the cases, the number of folders for each case, when and why the cases were opened and closed, and whether FBI officials monitored or observed first amendment activities during the investigations.

We selected, as I told you, a sample of 1,100 cases for questionnaire completion. Because of the FBI's delay in updating its list of closed cases, we used a two-phased approach for sampling cases. The first phase included 42 field offices which had about half of the universe of international terrorism cases. We randomly selected 550 cases from these offices. We provided the list of cases to the FBI on October 12, 1988. On October 21, the FBI transmitted a copy of our questionnaire and the case listings to the field offices and set a November 9, 1988, deadline to complete and return the questionnaires.

The second sampling phase covered the remaining 17 field offices. We provided the FBI with our list of 550 randomly selected cases from this grouping on December 6, 1988. The FBI's December 14, 1988 communication to the field offices gave them until the end of 1988 to complete and return the questionnaires.

The FBI took longer to provide us with the completed questionnaires than originally planned. About 85 and 89 percent of the questionnaires for each group, respectively, were returned within 2 months. The remaining questionnaires were returned to us sporadically over the next 4 months. As of June 9, 1989, a week ago, we had received questionnaires for all but 38 cases. Of these 38, 26 are open, eight are cases where the field offices could not locate the case files, and four are cases where the field office files had been sent to FBI headquarters.

Now, obtaining case files has slowed the GAO's ability to respond in a timely and complete fashion to the charge of the subcommittee. The FBI reviews case files before providing them to us, as I

said before, and they do this to assure that certain information is not revealed. Before giving us the copies, the FBI redacts information they believe would identify or could potentially identify informants, ongoing investigations, and sensitive investigative techniques. In addition, they redact information received from other agencies because they believe that we, the GAO, should obtain that information from the source agency.

Moving right ahead in my prepared statement, Mr. Chairman, you may recall that we met with you on February 16, 1989, because we had not received any of the files initially requested on December 20, 1988. I have jumped ahead to page 7, Mr. Chairman. We were concerned about the progress of work in responding to your request.

You subsequently met with Director Sessions on February 21 and he promised that the FBI would review the files and give them to GAO within 4 to 5 months. We were given the first four files on March 9, 1989, well over a year after we started the work. As of June 9, 1989, as of last Friday, we had received files for 84 of the 132 cases that we ultimately requested.

Getting now to what have we observed in a preliminary fashion based on the data we have received to date. Obviously, we're still analyzing the questionnaire responses as well as the case files received to date. We are prepared to share with you some of our preliminary observations. I must stress that they're preliminary. I want to emphasize, however, that the preliminary results may vary from any information we provide today, because we have 84 cases on hand and I think we've probably had a reasonable chance to review, to a limited degree, about 71 of them.

We have not as of yet—and I think this is important because of your initial concerns—we have not as of yet evaluated the propriety of actions taken by the FBI during its investigations.

Our review of the files for 71 cases shows that the basis for opening cases varied. So far, the files indicate that cases were opened because, for five cases, the subjects were believed to have been directly involved in terrorist acts; for about 19 cases, the subjects were believed to be leaders or members of terrorist groups; and for about 32 cases, the subjects were believed to be associated with or linked to terrorist groups.

From the information provided, we were unable to determine why 15 cases were opened. Why were we not able to determine that? One example might be that in the course of redacting sensitive information some of the predicate information itself had to be redacted. They didn't want us, if they were purging information that might be used to identify people or techniques, some of that information might be very germane to establishing our predicate. So in doing one, you removed others. There would probably be other reasons, but I think it's important only that 15 of the 71 cases were we unable to determine why they were opened.

We have not yet analyzed the case files to address the scope of the investigation. But using the FBI's responses for 892 questionnaires, 892 of the 1,100 that we initially sent out, we estimate that, for an adjusted universe of about 17,700 closed cases—and that would be the universe from which this sample of 892 would be a

projectable one—we're estimating that for about 17,700 cases most investigations were not extensive. These are projected results.

Most investigations were not extensive. About 17,500 cases had only one or two file folders. In contrast, as a matter of open public record, the CISPES case had 16 file folders. About 6,800 cases involved U.S. persons. By U.S. persons, I mean a citizen or permanent resident alien. About 6,800 cases involved U.S. persons as subjects. About 9,000 cases involved non-U.S. persons, and about 400 cases involved groups or organizations. The remaining 1,500 cases involved unknown or other subjects.

Individuals were indexed, and what do we mean by indexed. Indexation means recording of information into an FBI data base for future retrieval, if necessary. Individuals were indexed in about 8,300 cases, and about 3,400 of those cases were known to be U.S. persons.

Last, groups or organizations were indexed in about 1,900 cases, and known U.S. persons were part of these groups or organizations in about 800 cases.

We also estimate that in about 2,000 cases first amendment activities were observed or monitored either directly by the FBI or indirectly through a secondary source or sources.

The case file reviews show that the reasons cases were closed varied. The two most frequent reasons cited were, for 42 cases, no information was developed to indicate that the subject was involved in terrorist activity, and for 16 cases, the subject moved outside of that field office's jurisdiction, left the United States, or could not be located.

Mr. Chairman, that basically concludes my prepared statement. At this point I would be happy to provide you answers to any questions you or the other members of the subcommittee would have.

Mr. EDWARDS. Thank you very much, Mr. Jones.

[The prepared statement of Mr. Jones follows:]

PREPARED STATEMENT OF ARNOLD P. JONES, DIRECTOR, ADMINISTRATION OF JUSTICE
ISSUES, GENERAL GOVERNMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE

GAO's review of FBI international terrorism investigations that were closed from January 1, 1982, to June 30, 1988, has progressed slowly because it has taken the FBI

- about 3 months to update its data base of closed investigations so that GAO could select a sample for review;
- about 6 months to complete the questionnaires GAO designed to profile international terrorism cases as a step in sample selection; and
- several months to review, edit, and provide GAO with the copies of selected case files.

GAO has now received almost all of the completed questionnaires and about half of the case files requested. All of the information obtained and reviewed relates only to closed investigations. The questionnaire responses and case files are still being reviewed and analyzed, and the final results may vary from the information presented in this statement.

Thus far, GAO's analysis of the files for 71 cases shows that the basis for opening cases varied. Cases were opened because (1) the subjects were believed to have been directly involved in terrorist acts (5 cases or about 7 percent); (2) the subjects were believed to be leaders or members of terrorist groups (19 cases or about 27 percent); and (3) the subjects were believed to be associated with or linked to terrorist groups (32 cases or about 45 percent). GAO was unable to determine why the remaining 15 cases (about 21 percent) were opened.

GAO has not yet analyzed the case files regarding the scope of the investigations. However, projecting the FBI's questionnaire responses, GAO estimates that (1) most investigations (about 17,500 cases or 99 percent) were not extensive; (2) the subjects of the investigations were U.S. persons in about 6,800 cases (38 percent); and (3) information on individuals was recorded (indexed) into FBI data bases in about 8,300 cases (47 percent). GAO also estimates that, for about 2,000 cases (11 percent), First Amendment activities (speeches, demonstrations, etc.) were monitored or observed.

In terms of investigation results, GAO's analysis of the case files is showing the cases were closed for a variety of reasons, with the most frequent reason being that no information was developed that linked the subject with terrorist activities.

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to discuss the status of our review of the Federal Bureau of Investigation's (FBI) international terrorism program.

BACKGROUND

On March 8, 1988, more than 15 months ago, you asked us to review the FBI's international terrorism program. You were concerned that the FBI's international terrorism investigation of the Committee in Solidarity with the People of El Salvador (CISPES) was overly broad and not properly focused. You wanted us to review the FBI's other international terrorism cases to determine if the CISPES investigation was an aberration. Specifically, you wanted us to determine (1) the basis on which the FBI initiates international terrorism investigations; (2) the scope and results of these investigations; and (3) whether the FBI monitors First Amendment activities (speeches, marches, demonstrations, etc.) when making such investigations.

To respond to your request, we agreed with the subcommittee to select a random sample of cases closed from January 1982 to June 1988 and have FBI agents fill out a questionnaire on the cases. Using the questionnaire results, we are randomly selecting cases for detailed review.

Our progress in responding to your request has been slow, primarily because of delays in obtaining requested information and access to closed case files. After numerous meetings and correspondence with FBI officials, we have received responses for almost all of our questionnaires and are receiving copies of edited (redacted) files for closed cases. While the progress during this review has been slow, the officials with whom we have dealt have not been uncooperative.

The remainder of my statement will summarize the delays we have encountered and our preliminary observations based on the work we have done to date.

GAO's ACCESS HAS BEEN DELAYED

We held opening meetings with FBI officials on March 21, 1988, and through April reviewed procedures and interviewed FBI headquarters officials about the international terrorism program. Our access to information needed to respond to your request has been delayed because it has taken the FBI (1) about 3 months to update its data base of closed investigations, which we needed to select cases for review; (2) about 6 months to get the questionnaires for all but 38 of the 1,100 cases we randomly selected; and (3) several months to review, redact, and provide us with the copies of files received to date.

Data base incomplete

To gain overall knowledge about the FBI's international terrorism investigations, we planned to review a sample of cases. The first step in selecting a sample is to identify the universe of cases. The FBI maintains a computer data base of its international terrorism cases. However, FBI officials said that the data base was incomplete because it was not begun until September 1985 and cases completed before then had to be added.

To obtain a complete list of cases, on August 11, 1988, FBI headquarters instructed each field office to update their case information. Each office was to provide FBI headquarters with the updated information within 3 weeks; however, this effort took considerably longer. FBI officials provided us with updated lists of cases, by each of its 59 field offices, over a 3-month period. The first five lists of closed cases were given to us on September 2, 1988, and the last list was given to us on November 18, 1988.

Questionnaire returns were slow

The FBI's updated lists identified about 20,000 international terrorism cases that were closed between January 1, 1982, and June 30, 1988. We developed a questionnaire to gather overall

profile data on a projectable sample of these cases and to act as a screening document to select a smaller sample of cases for more detailed review. We designed our sample to produce a sampling error of less than plus or minus 5 percent. The questionnaires were to be completed by FBI field agents based on their review of the case files. The questionnaires requested such information as the name of the subject of the cases, the number of folders for each case, when and why the cases were opened and closed, and whether FBI officials monitored or observed First Amendment activities during the investigations.

We selected a sample of 1,100 cases for questionnaire completion. Because of the FBI's delay in updating its list of closed cases, we used a two-phased approach for sampling cases. The first phase included 42 field offices which had about half of the universe of international terrorism cases. We randomly selected 550 cases from these offices. We provided the list of cases to the FBI on October 12, 1988. On October 21, 1988, the FBI transmitted a copy of our questionnaire and the case listings to the field offices, and set a November 9, 1988, deadline to complete and return the questionnaires. The second sampling phase covered the remaining 17 field offices. We provided the FBI with our list of 550 randomly selected cases from this grouping on December 6, 1988. The FBI's December 14, 1988, communication to these field offices gave them until the end of the year to complete and return the questionnaires.

The FBI took longer to provide us with the completed questionnaires than originally planned. About 85 and 89 percent of the questionnaires for each group, respectively, were returned within 2 months. The remaining questionnaires were returned to us sporadically over the next 4 months. As of June 9, 1989, we had received the questionnaires for all but 38 cases. Of these 38, 26 are open cases, 8 are cases where the field offices could not locate the case files, and 4 are cases where the field office files had been sent to FBI headquarters.

Obtaining case files has slowed review

The FBI reviews case files before providing them to us, to assure that certain information is not revealed. Before giving us copies, the FBI redacts information they believe would identify or could potentially identify informants, ongoing investigations, and sensitive investigative techniques. In addition, they redact information received from other agencies because they believe that we should obtain the information from the source agency.

To get an idea of the type of information contained in international terrorism investigative files, on May 2, 1988, we requested access to the case files for six closed investigations. These files were redacted by the FBI's Legal Counsel Division. Two of the files were given to us on June 17, another on June 21,

and two more on July 26. On August 23 the FBI said the sixth case had been reopened and we would not be given access to it.

While the amount of information redacted from the five cases was not extensive, we believed that the process took too long. We discussed our concerns about the timeliness of this process with FBI officials and, on August 24, 1988, met with the FBI's Assistant Director, Criminal Investigative Division. To expedite the redaction process, FBI officials suggested that, rather than using the legal division's analysts, field agents be brought in to do the redaction of future case files. To test this approach, on August 31, 1988, we requested additional case files from the FBI's Washington Metropolitan Field Office. The redacted files for 18 cases were given to us on October 6, 1988, 5 weeks later. Although this process was more timely, the redaction was much more extensive than that which had been done by the legal division. In many cases, so much information had been deleted that we could not determine the basis for, scope of, and/or results of the cases.

On November 9, 1988, we met with FBI officials to express our concerns about the redaction process. We were unable to resolve our differences, so we met with the FBI's Executive Assistant Director for Investigations on December 19, 1988. We were told that, if we acted quickly, the legal division had 10 to 12 people available to redact cases for us. The next day, we provided the

FBI a list of 42 cases we wanted to review. Our primary basis for selecting cases for detailed review was to sample cases where the FBI observed or monitored First Amendment activities. On January 24 and February 13, 1989, we gave the FBI lists of another 10 and 80 cases, respectively, that we wanted to review. We plan to select about 20 more cases for review.

Mr. Chairman, you may recall that we met with you on February 16, 1989, because we had not received copies of any of the files by that time and we were concerned about the progress of work in responding to your request. You met with Director Sessions on February 21 and he promised that the FBI would review the files and give them to GAO within 4 to 5 months. We were given the first 4 files on March 9, 1989. As of June 9, 1989, we had received the files for 84 of the 132 cases requested.

PRELIMINARY RESULTS OF OUR WORK

We are still analyzing the questionnaire responses and case files we have received to date. However, we are prepared to share with you some of our preliminary observations. We want to emphasize, however, that the final results may vary from any information we provide to the subcommittee today. We also want to emphasize that we have not yet evaluated the propriety of the actions taken by the FBI during the investigations.

Our review of the files for 71 cases shows that the basis for opening cases varied. Thus far, the files indicate that cases were opened because:

- for 5 cases (about 7 percent), the subjects were believed to have been directly involved in terrorist acts;
- for 19 cases (about 27 percent), the subjects were believed to be leaders or members of terrorist groups; and
- for 32 cases (about 45 percent), the subjects were believed to be associated with or linked to terrorist groups.

From the information provided, we were unable to determine why 15 cases (about 21 percent) were opened.

We have not yet analyzed the case files concerning the scope of the investigations. However, using the FBI's responses for 892 questionnaires, we estimate that, for an adjusted universe of about 17,700 closed cases:

- Most investigations were not extensive; about 17,500 cases (99 percent) had only 1 or 2 file folders. In contrast, the CISPES case had 16 file folders.
- About 6,800 cases (38 percent) involved U.S. persons (U.S. citizens or permanent resident aliens) as subjects, about 9,000 cases (51 percent) involved non-U.S. persons, and about 400 cases (2 percent) involved groups or organizations. The remaining 1,500 cases (8 percent) were unknown or other subjects.
- Individuals were indexed (recording of information into an FBI data base for future retrieval) in about 8,300 cases (47 percent) and about 3,400 of those cases (41 percent) were known to be U.S. persons.

- Groups or organizations were indexed in about 1,900 cases (11 percent) and known U.S. persons were part of these groups or organizations in about 800 cases (42 percent).

We also estimate that, in about 2,000 cases (11 percent), First Amendment activities (speeches, marches, demonstrations, etc.) were observed or monitored either directly by the FBI or indirectly through a secondary source.

The case file reviews show that the reasons cases were closed varied. The two most frequent reasons were (1) for 42 cases, no information was developed to indicate that the subject was involved in terrorist activities and (2) for 16 cases, the subject moved outside that field office's jurisdiction, left the United States, or could not be located.

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Mr. Chairman, this concludes my prepared statement. We would be pleased to answer any questions you may have.

Mr. EDWARDS. Mr. James, do you have an opening statement, or do you want to ask questions?

Mr. JAMES. No, I do not. I want to thank the witness, though, for testifying so expertly and for giving us such great detail. Thank you.

Mr. EDWARDS. Thank you, Mr. James.

How much work is involved in completing these questionnaires? Is it an arduous task? What would your estimate be for the average time it would take a field office or the headquarters to complete a questionnaire?

Mr. JONES. We pretested it, Mr. Chairman. I think Mr. Outlaw would be able to respond to that better than the other two of us.

Mr. OUTLAW. It would really depend on the size of the case, how many file folders were involved. But on the average, if you have a case that has one or two file folders, it shouldn't take more than 1 to 2 hours to complete that questionnaire.

Mr. EDWARDS. Well, do file folders vary in size?

Mr. OUTLAW. Yes, they do.

Mr. EDWARDS. From how many pages to how many pages?

Mr. OUTLAW. One file folder could be four documents, four pages, or it could be a document that's an inch thick. It varies by case, sir.

Mr. JONES. Mr. Chairman, in terms of the number of volumes per file, 27 of the cases that we looked at had 5 or more volumes of files per case. One of the cases which has been reopened is the largest one on our questionnaire sample. For example, it had 37 volumes. So you're talking about a wide variation possibly in the volumes of files associated with cases. It just varies.

As we indicated in the testimony before, in terms of the vast majority of cases, they had only one or two file folders. So in terms of what we projected, most of them are not very extensive. I think that's important to get on the record, that we're talking in terms of a universe of—we're saying 99 percent had only one or two file folders, notwithstanding an aberration of one which has 37 volumes. But most of them are not that big.

Mr. EDWARDS. Thank you.

Now, you have not reviewed any open cases?

Mr. JONES. Mr. Chairman, we have not reviewed open cases. We occasionally meet with FBI officials to waltz around that. That issue is there, it has been there. In my judgment, the Congress may have to address that. If you will allow me not only the issue of open cases, but the issue of access to personnel. I have to be very frank in telling you that in order to do the type of work we feel is necessary, access to people is important.

Now, you might say "Mr. Jones, what do you mean? Don't you talk with FBI officials?" Of course, we do. But there is no procedural basis, and certainly no legal basis, that addresses accessing people. The Budget and Accounting Act, certainly as amended by the GAO Act of 1980, addresses books, records, documents and papers. It is silent on people. We feel the need, in following through on the work we do for the Congress, to have access to, for example, individual case agents.

As you will recall, we have negotiated in the past sometimes accessing agents with supervisors present. Sometimes we have been able to talk only to supervisors. I feel that the ultimate issue of get-

ting the information we need involves the ability to follow through from closed to open to closed cases, and also the ability to talk to those persons who have the hands-on experience relating to the issues we have at hand. Whether it is antiterrorism or whether it is defense procurement fraud, whatever, I think it's important that we have access to the individual agents. It is a matter that I think is going to require the attention of the Congress.

Mr. EDWARDS. Tell me, Mr. Jones, in audits or investigations by the GAO in connection with the Department of Defense or in connection with the Department of Energy, in connection with the most sensitive, strategic secrets of our country, what kind of access does the GAO have with regard to interviewing employees and reviewing cases?

Mr. JONES. Mr. Chairman, I'm not going to be able to answer that as well as you think I should because my experience has been one with civil agencies over my 16 years with the office. I've never had any direct experience on the defense side, and in particular with the Department of Defense. I have to say I'm very experienced with accessing issues at the Department of Justice, including its law enforcement agents, its people in the Bureau of Prisons, the U.S. attorneys. I can address that, and it's difficult.

In terms of what my counterparts experienced, when I once had experienced postal issues, I talked with postal officials at the highest levels and postal inspectors, who are law enforcement agents in the Postal Service, at any level. I had no trouble talking with DEA agents, by the way, with whom I have a lot of experience in the past. Customs agents and officers, I've had no difficulty talking with them in the course of conducting the business of the Congress.

Mr. EDWARDS. I believe that we will address a letter to the Comptroller General for a specific answer to that question. It makes oversight very difficult if this information is so closely held that oversight is not possible in its correct way. We're going through this experience in the Federal Government right now with HUD and with the savings and loan scandals and all of that, where we're finding out that unless there is diligent, hard-hitting oversight, it can result in terrible distress, and also cost an awful lot of money. So we will probably address a letter.

Do you think you have statutory authority to see open case files?

Mr. JONES. The General Accounting Office, as a matter of record, has always been of the opinion that the Budget and Accounting Act, as amended, by the GAO Act of 1980, was sufficient grounds for us to access open cases. As a matter of fact, the so-called G Street agreement, the agreement reached between the FBI and the GAO, which is often used by the FBI as the basis for denying us access to open cases, is not as specific on the denial as is often said. The agreement—and I'm going to quote—says that we are not permitted to review original, uncensored case files, nor are we permitted to review active investigations where disclosure of any information contained in such cases may prejudice the prosecutive process.

Now, the reality is that it is apparently assumed on the part of the agency that every access to an open case would prejudice the prosecutive process, therefore, blanket, we're denied access. I might add that the act of 1980 also gave us judicial relief, but on matters relating to investigatory files that provision of the law giving us ju-

dicial relief in accessing records and data held by executive agencies exempts investigatory records compiled for law enforcement purposes under certain conditions.

Now, the President of the United States and/or the Director of OMB can certify that disclosure of that information to the GAO would reasonably be expected to substantially impair the operations of the Federal Government and, upon that certification, we could be denied. To my knowledge, in the justice area, we have only once sent such a letter to the President of the United States asking for access, and interestingly, it involved the Drug Enforcement Administration and it involved the then acting Administrator Mullin, who was a former, I believe, Executive Assistant Director at the FBI. That was resolved basically, as I understand the politics of the situation, by the President saying "you guys work it out." And it got worked out. There is a more liberal agreement with DEA which sort of says we'll redact certain information from our case files to protect informants and investigative techniques and so forth, and we will then let you see them, but in order to verify that you have an accurate presentation and that the redaction process has been honest and fair and lawful, that a senior official of the GAO may, on selected cases, go in and read raw data to verify, in fact, that we have been honest.

Now, I think that is good. We have not had to use it because it got worked out. But that was with a Justice Department agency that is a law enforcement agency, an investigatory agency. That's a rather circuitous answer to your question.

Mr. EDWARDS. That's helpful. We have quite a few more questions, but we'll first ask Mr. Dempsey to ask some questions and then minority counsel.

Mr. DEMPSEY. The largest percentage of investigations, 45 percent of the investigations that you preliminarily found, were of subjects believed to be associated with or linked to terrorist groups. How are those terms, "associated with" and "linked to," defined by you?

Mr. ANDERSON. Generally speaking, we could find no direct link where these individuals or groups were believed to have been directly involved in planning or committing a terrorist act. It was a much, much softer link, and they were being investigated for reasons that were softer from the standpoint that we didn't see—there was no evidence in the file, anyway, that there was any specific allegation of criminal activity that we were aware of. Just some information, an informant or something indicating they might be associated with a terrorist group or activity.

Mr. DEMPSEY. Was the association or link always to criminal activity?

Mr. ANDERSON. No.

Mr. DEMPSEY. In the CISPES investigation, CISPES supported the FMLN, which was characterized as a terrorist group, and therefore CISPES was associated with or linked to international terrorism. Is that the kind of association that we're talking about here?

Mr. ANDERSON. Tim, if you want to add anything—

Mr. OUTLAW. That would be very similar, very analogous to this type of categorization that we're making here, yes.

Mr. JONES. Mr. Counsel, may I?

Mr. DEMPSEY. Please.

Mr. JONES. I think the issue here is the adequacy of the sufficiency of criminal predicate. I think that's important. But in fairness, the guidelines under which these investigations are initiated are sufficiently broad to not require, as you know, a clear criminal predicate. So in terms of the arena in which we operate, you have that lack of specificity. There is obviously room, then, for a great deal of agent and agency judgment, and there is also absolutely lacking criteria of propriety. So when we go in to address whether or not an investigation was initiated in good faith, or whether there was an adequate criminal predicate or noncriminal predicate, I think the difficulty, as far as an organization like the General Accounting Office, the difficulty we're going to encounter is the latitude given under the guidelines. You don't want to preclude the use of agency judgment, but also the lack of adequate appreciation or a standard of propriety. I offer that free.

Mr. DEMPSEY. You're saying that in the guidelines there is no standard that can be referred to, that gives a concrete standard?

Mr. JONES. I would imagine, not being an author of it, but I would imagine it certainly would allow for a degree of judgment that I think all reasonable people would expect to be used but not abused. So, consequently, judgment and propriety, or the absence of a standard of propriety, sometimes run in opposition to one another and maybe there needs to be clarity there. That's what I'm saying.

Mr. EDWARDS. Do you think that the guidelines could be tightened so that this danger could be avoided and would give the individual agents and the special agents in charge more guidance, so that the investigations could be handled in perhaps a more appropriate way?

Mr. JONES. I would like to do two things. I would like to waltz that question away until we issue our report and analyze the final cases so we can project with comfort. I would say I would be very, very careful and want to test any recommendations we might make very carefully, because I don't think we want to proscribe behavior too tightly as to preclude the use of judgment in cases where judgment is called for. I think that's the very delicate balance that, thank goodness, Mr. Chairman, you will have to address.

Mr. EDWARDS. Very good.

Mr. DEMPSEY. Now, when do you expect to be able to complete your work on this?

Mr. ANDERSON. We expect to issue the report by the end of the year, assuming that we continue to get cases from the FBI at the rate we've been getting them lately.

Mr. DEMPSEY. So in the next 6 months, would it be possible for you to focus more on these cases that fall within this category of "believed to be associated with or linked to?"

Mr. ANDERSON. Yes.

Mr. JONES. You see, we feel this is very important to the concerns of the original request, and that's what we want to do. We want to have time. You know, I come here almost apologetic. For a year and a half, you would expect the General Accounting Office to be able to say more. Well, we just can't because we haven't had the

cases in sufficient numbers or sufficient time to do the detailed analysis necessary to provide the specific answers to the questions you've asked. We just can't do it today.

Mr. DEMPSEY. Going back to the open case question, could you tell us how many open international terrorism cases there are? What is the size of that universe?

Mr. OUTLAW. We don't have those numbers with us. We can supply it for the record, if that is not classified information. I'm not sure. The Bureau might classify the number of pending investigations. They may classify that. I'm not sure.

Mr. DEMPSEY. When you reviewed any open cases, would you do so with the names of subjects and informants deleted?

Mr. JONES. Absolutely. I have to be absolutely clear on this. I concur with the observation of the FBI and others that, for purposes of doing evaluations of programs, of consequences or evaluations of programs, of policy analyses, the General Accounting Office does not need to see informant names or informant identifiers. We don't need to see that.

But there's a big difference between an informant name and informant identifier and the deletion of so much material that, for example, it's impossible for us to determine a predicate for investigation. I mean, there has to be a more comfortable middle ground.

Mr. DEMPSEY. But with the closed cases that you've been reviewing up until now, have you had entire pages or entire documents deleted in the name of protecting the identity of an informant?

Mr. OUTLAW. We have had entire documents deleted for a variety of reasons, yes, and major pages out of documents deleted.

Mr. DEMPSEY. In their entirety.

Mr. OUTLAW. In their entirety, yes, sir.

Mr. DEMPSEY. With the open cases, would you be able to use a questionnaire to get some statistical information on those cases?

Mr. JONES. I think the approach to open cases, from a methodological point of view, would be exactly the same as for closed cases. They're cases. We would use the questionnaires to get a target population. From those questionnaires then we would try to select a subsample of open IT cases, international terrorism cases. Obviously, I think what we give you is skewed. I mean, anything we ultimately give you with respect to cases closed. Who defines, who decides, for instance, if it's open or closed. Obviously, the Bureau does, the agency does.

Mr. DEMPSEY. So your questionnaire, for example, would identify how many open cases involved monitoring of demonstrations or other political activity?

Mr. JONES. Yes, sir.

Mr. EDWARDS. I believe we have some questions from minority counsel.

Ms. KIKO. Mr. Chairman, we have no questions.

Mr. EDWARDS. If you have a couple more, I'm going to have to go after the second bell.

Mr. DEMPSEY. Now, 99 percent of the cases you have estimated based on the questionnaire had only one or two file volumes to them. How many cases had more than two volumes? How many does that leave us with, 1,000, 2,000?

Mr. OUTLAW. Roughly, yes, sir.

Mr. DEMPSEY. And what was the range there? Mr. Jones used a figure that 27 cases had five or more. Is that 27 cases out of the 1,100?

Mr. OUTLAW. Yes, out of the questionnaire that we sent out for the 1,100 cases.

Mr. DEMPSEY. You used an 800 figure at one point.

Mr. ANDERSON. The 800 was the number that we had analyzed as of that time.

Mr. DEMPSEY. So it was 27 out of 800?

Mr. OUTLAW. Yes, that's correct.

Mr. DEMPSEY. That had five or more volumes.

Mr. OUTLAW. That is correct.

Mr. DEMPSEY. And you identified one that had 37.

In your final report, will you be able to show us as chart that spells out what these ranges are in some fashion?

Mr. JONES. To the extent that the numbers that we're using here. As you know, we ran copies of our testimony by the FBI for purposes of security, for purposes of making sure we didn't divulge any sensitive information. So to the extent that numbers such as this have been deemed as discussable and open, yes, we would be able to do that.

I hesitate only to say that we have an agreement about not disclosing any confidential information. I would hope so and I would think so.

Mr. DEMPSEY. What conclusions can you draw from the fact that 99 percent of the FBI's terrorism cases are closed with only one or two volumes of information?

Mr. JONES. There are two possible interpretations. You can say that, on the one hand, there's a lot of activity coming to little end. I mean, you could say that. On the other hand, you could say that gee, they go in, they have to follow up on leads, and they get in and get out.

It seems to me that both of those answers from the GAO to the Congress are unsatisfactory. They are unsatisfactory because, on the one hand or on the other—as I mentioned before, the issue that I think is implied by that question is, are they engaging in frivolous investigations, because I don't think the Congress, and certainly not GAO, if they go in and have an adequate predicate for looking at a case, went in and said gee, Arnold Jones is fine, this was nothing, great.

We lack the ability to talk about the propriety of investigations. I don't know the answer. I don't know what this means when 99 percent of their cases projected have one or two files on there. It could just mean that a lot of people are doing things that maybe would not be as important as other things they could be doing. We just don't know, and that's one of the reasons we need better access.

Mr. DEMPSEY. Is there a way to find out? Is there a way to answer that question?

Mr. JONES. I think one of the things we would want to do is, of course, have time to go into detail in the cases, in the files, yes. You go in and see exactly what people did.

In terms of looking at files, remember, a file only says what someone wrote. That is why, if we look at a file, and then could go back to that agent, Agent Outlaw, and say you put this there, so

what really went on? In that dialog you get the truth. Anything short of a dialog, of having reasonably unrestricted access to books and records and people, other than that, it makes it difficult.

Mr. DEMPSEY. Well, is this something that you are going to try to answer in the next 6 months?

Mr. JONES. We have broached, on any number of occasions, the issue of access to open cases over the years. I personally talked to the Executive Assistant Director, to Mr. Revell, about accessing agents directly. His position was with a supervisor present. I have to tell you, I said if that's the way it has to be, then that's the way it has to be. We'll keep coming back to it.

I didn't answer your question. Yes, we're going to pursue it and pursue it and pursue it ad infinitum, or ad nauseam, but there's a bottom line on which we are just limited in terms of our ability to make them do anything.

Mr. EDWARDS. Thank you very much, Mr. Jones, and gentlemen. We will see you again towards the end of the year, if not before. We do appreciate your work. You have made good progress with some difficulty.

Mr. JONES. Thank you, Mr. Chairman.

[Whereupon, at 12:11 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—MATERIAL RELATED TO THE JUNE 21, 1989, HEARING



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

July 31, 1987

Mr. John G. Healey
Executive Director
Amnesty International, USA
322 Eighth Avenue
New York, New York

Dear Mr. Healey:

Thank you for your letter of July 2, 1987, concerning reported contacts between members and volunteers of Amnesty International and Special Agents of the FBI. Initially, I want to allay any concerns on your part that the FBI does not have an investigative interest in Amnesty International nor is there any attempt by the FBI or its personnel to interfere in your organization's endeavors.

As you are aware, the FBI is responsible for conducting foreign counterintelligence investigations in the United States. In fulfilling that charter the FBI attempts to identify and resolve unexplained contacts between persons in this country and officials of the Soviet Union and other foreign countries. It has been our experience that the least intrusive way to resolve any questions is to interview the persons involved in those contacts. This would explain why in the past Special Agents of this Bureau have, on occasion, contacted some members of your organization.

I am sure that from time-to-time in the future you may receive information that other Amnesty International members have been contacted by our Special Agents. You may be assured that such contacts are undertaken only to resolve investigative questions as they relate to the FBI's foreign counterintelligence responsibilities and are in no way an attempt to interfere with Amnesty International's legitimate goals.

Sincerely yours,

James H. Geer
Assistant Director in Charge
Intelligence Division



Bicentennial of the United States Constitution (1787-1987)



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

February 9, 1988

Mr. John G. Healey
Executive Director
Amnesty International USA
608 Massachusetts Avenue, Northeast
Washington, D. C. 20002

Dear Mr. Healey:

I am appreciative of the concern expressed by you in your letter of December 21, 1987, to Director Sessions regarding contacts by Special Agents of the FBI with members of your organization. As I explained to you in my letter of July 31, 1987, the FBI has no investigative interest in Amnesty International, nor is it attempting to interfere in your organization's endeavors.

In my July letter I advised you that from time to time such contacts by our Agents with your membership would occur and that these contacts were only to resolve issues being investigated by the FBI as part of our counterintelligence responsibilities. Unfortunately, some of the foreign officials or diplomatic establishments contacted by your members are of interest to us and the fact that the contact was solely for the interests of Amnesty International does not become known to us until we conduct an interview. As our primary tool in the conduct of our investigations is the cooperation of the public, our Agents are sensitive to the impression they convey to those individuals they contact. A lack of understanding of our responsibilities by the public is, therefore, detrimental to the conduct of our activities and efforts to correct any misunderstanding are both helpful to us and to the alleviation of any fears by the public.

I will, as the individual responsible for this aspect of the FBI's activities, meet with you and discuss this mutual problem. A better understanding will be mutually beneficial to both organizations. You may contact me at 202-324-4880 so we may set up a meeting.

Sincerely yours,

James H. Geer
Assistant Director in Charge
Intelligence Division



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

May 4, 1989

Honorable Robert S. Walker
House of Representatives
Washington, D.C. 20515

Dear Congressman Walker:

This is in further response to your inquiry of April 5th on behalf of Mr. John A. Jarvis. Mr. Jarvis had written to you about his concern that an FBI Agent had been in contact with him and his wife at their residence.

As you know, the FBI is charged with the investigative responsibility of maintaining the integrity of this country's national security through our foreign counterintelligence role. In doing so, the FBI attempts to identify and resolve unexplained contacts between persons in this country and officials from those countries which might be of investigative interest to this Bureau. It has been our experience that the most expedient way to resolve any questions is to interview the persons involved in those contacts.

In conducting these interviews, it is not our intention to interfere with anyone's rights. We rely upon the cooperation of the public and seek help from those individuals who might be in a position to furnish us information. I hope this information will assist you in responding to the concerns of Mr. Jarvis.

Sincerely yours,

John E. Collingwood
John E. Collingwood
Inspector-in-Charge
Congressional Affairs Office

ARIZONA REPUBLIC April 19, 89

Shhh! Don't tell the FBI: I subscribed to a Soviet magazine



E.J. MONTINI

Republic Columnist

Phoenix may be crawling with Soviet spies. The FBI thought 73-year-old Virginia Bernard might be one.

They probably believe that I'm one, too. Maybe you as well. Eternal vigilance is required. In fact, since last week, when I wrote about Virginia, a grandmother of 11, I've heard from at least five other possible pinko types who were investigated by local G-men: a homemaker, a retired teacher, a tourist, a student, a clerk.

Their stories weren't much different from Virginia's. She was visited by a special agent in late March. The reason for the investigation, Virginia was told, were two "black marks" against her.

The first was a subscription to *Soviet Life* magazine, a Soviet-produced publication circulated here under a 1956 cultural-exchange agreement. (We circu-

late *America Illustrated* over there.)

The second mark against her was a letter Virginia wrote to the Soviet Embassy, thanking the U.S.S.R. for sending an icebreaker to free two whales trapped in the ice near Barrow, Alaska.

That prompted one of J. Edgar's finest to come knocking at her door. Which made Virginia angry. She asked whether I could find out why this happened to her, and whether it is happening to others. She also wrote to U.S. Sen. Dennis DeConcini.

Since then, others who were "visited" by the FBI have contacted me. One was interrogated after requesting tourist information from a Soviet consulate. Another sent post cards to the Soviet Embassy asking for permission to write to Soviet Christians.

When I asked about this, the FBI would say only, "No comment."

The policy for G-men is, "We ask questions, buddy, we don't answer them." Unless the questions come from a U.S. senator.

Sen. DeConcini has written to FBI Director William Sessions concerning Virginia's interrogation. His letter reads in part, "I would like to know the specifics of the incident as well as the policy that led to it."

In other words, why are G-men grilling grandmothers?

Bob Maynes of DeConcini's office told me, "I guarantee you that they'll respond to our request. The bureau is unlikely not to answer an inquiry from a member of the Senate."

I hope we get an answer soon, or at least before the feds find out about my personal contact with the Russkies.

It's true.

Last week, along with a number of other people in Arizona, I received a computerized solicitation to subscribe to *Soviet Life*. It was, according to the full-color brochure enclosed, a "special glasnost introductory offer." Twelve issues for \$12.

Imagine what the G-men must be thinking: "A week ago, Montini writes about commies and *Soviet Life*. This week, he gets an invitation to subscribe. Coincidence? I don't think so — *commrade*."

The editor of *Soviet Life* enclosed a note saying he hoped the magazine would "whet your desire to know us better." The FBI won't like that.

I might as well confess.

I detached the "yes" token from the subscription form and affixed it to a space on a return post card, agreeing to a "very

special trial offer" of *Soviet Life*.

I couldn't help myself.

I've got this uncontrollable urge — to read. Maybe it's a communist plot; something involving me, Grandmother Bernard and an underground army of librarians, teachers and other subversives throughout the nation. The Reds must figure that by encouraging Americans to read, we might begin to *think*.

Picture that.

Nol Don't. This reading business must be stopped. Alert Nancy Reagan. We need an all-American effort similar to her war on drugs. Something short and snappy to reinforce this anti-reading, anti-thinking campaign. Something that America's young people can understand and call upon whenever they're tempted to learn about the Soviet Union. Something like...

"Just say nyet."

FBI visit on letter, Soviet magazine makes grandma see red



E.J. MONTINI
 Republic Columnist

The young man on the telephone said he was an agent with the FBI. "Yeah, right," thought Virginia Bernard.

He told Bernard that it was important to meet with her. He had a few questions to ask. It was March 30. Not quite April Fools' Day, but close enough. Virginia put her husband, George, on the phone to see if it was a hoax.

"George ended up inviting the young man to come over to our place around noon," she said. "We thought it was rather strange. A joke or something."

It was a joke or something. Only it wasn't funny. It was government bureaucracy at work. The FBI had assigned a special agent to find out if Virginia Bernard, 73-year-old mother of four, grandmother of 11, was a Russian spy.

"When he arrived, he asked me very formally if I were Virginia Bernard," she said. "I told him that I was. He read off my birth date and my Social Security number and such from this notebook he

had, and then he said, 'Have you ever been in contact with a foreign embassy?'"

Virginia was taken aback.

"A foreign embassy?" she thought.

"I asked him why he needed all this, and he said to me, 'Well, you subscribe to *Soviet Life* magazine, don't you?'"

Soviet Life, in case you haven't seen it, is the *Arizona Highways* of Russia. Published in Washington, D.C., by Soviet interests, it mimics the size and layout of *Life* magazine, and features the kind of "let's put our best foot forward" photographs you see in *Highways*.

We used to have it in our school library. (Does that mean, as I always suspected, that the nuns were Russian spies?)

According to Virginia, the G-man told her, "When you subscribed to *Soviet Life*, that was Mark 1 against you."

"Imagine," Virginia told me. "Subscribing to a magazine is a black mark against you with the FBI? Doesn't that sound more like something they'd do in Russia?"

Virginia has subscribed to *Soviet Life* for about four years. She believes someone sent her a copy as a gift. She likes the pictures and the stories on the Soviet Union's many distinct regions.

"Then," the FBI agent told her, "you wrote to the Russian Embassy. That was Mark 2."

Last year, two whales were trapped in the ice near Barrow, Alaska. It was worldwide news. They were freed when a Soviet icebreaker cut a path for them to open seas. Listening to a radio talk show at the time, Virginia heard the host suggest that listeners might consider writing a thank-you note to the Soviet Embassy.

"So that's what I did," she said. "I'm a letter writer anyway. And, of course, I put my return address right on the envelope. Do these guys think that spies put return addresses on the envelopes?"

The agent told Virginia that those two supposedly Marxist activities, the magazine subscription and the letter, triggered

an investigation.

"He said, 'I need to clear this up,'" she recalls. "He wanted to know what was in the letter. He even said, 'It's in the interest of national security.'"

Upon hearing that, Virginia's husband burst out laughing.

"The agent snapped around, glaring at George," Virginia said. "Then he said to George, 'Don't mock me.'"

George, a Navy veteran retired after 22 years with the Internal Revenue Service, told the young man that he would laugh if he wanted to.

"When I realized what the FBI man was driving at, I put my hands on my desk, looked him right in the eye, and said, 'I'm (expletive),' " Virginia said. "I'm very angry that my tax dollars are paying for this kind of crap."

The agent said he was only doing his job.

"I had a terrible feeling," Virginia said, "that I was dealing with a brainwashed

Nazi mentality."

When the G-man left, Virginia sat down and wrote a letter to Sen. Don DeConcini, asking him to look into the situation. She hasn't heard back yet.

"My kids have been teasing me mercilessly about this," she said. "It's funny. But it's scary, too. It's McCarthyism."

She's right.

I called the local FBI office.

I wanted to ask how many magazine subscription lists are scrutinized; to find out if letters to all foreign embassies are monitored; to ask what other "Marxist" activities warrant black marks against us.

Ordering vodka at a bar? Renting *Dr. Zhivago* from the video store? Checking *War and Peace* out of the public library? Wearing red? What about seeing red?

I spoke to agent Jack Loughney at the FBI office in Phoenix.

He would only say, "The FBI has no comment."

FBI intercepts letter, stalls boy's homework

United Press International
KIMMEL, Ind.—Talk about a great excuse for late homework: 12-year-old Ian Glasson of Kimmel can blame the FBI.

He wrote a letter in October to the Yugoslav Embassy in Washington to get information for a school assignment.

That prompted a visit to the Glassons by an FBI agent. The FBI has declined to comment, but Ian's father, James Glasson, said the agent asked about the letter and told the boy there would be a file on him.

Branislav Bajovic, second secretary of the embassy, said, meanwhile, that the embassy was unable to find Ian's letter.

But Ian will get an answer anyway, the Indianapolis Star reported Saturday. The newspaper contacted the embassy and received a copy of a letter being sent to Ian by Bajovic.

Bajovic alluded to the FBI agent's visit to the Glassons, and said, "I am very much

surprised by the treatment you had been exposed to, since my country and yours have had good and friendly relations for decades."

Last week, Bajovic and a State Department spokesman voiced concerns about the investigation.

Bajovic said in his letter that he was enclosing information about his country, some Yugoslav coins and a \$1 bill. Ian had sent a dollar in his letter, seeking Yugoslav coins in exchange.

As of Friday, Bajovic's letter had not been received.

Ian's father said the letter would gladden Ian, but he remained concerned.

"What if Ian wanted to be a police officer, or an FBI agent, and would he have this on his record? [The agent] said he would, but it would say it was for a school project. . . . Still, it's a little frightening, like Big Brother across the street watching you."

Memorandum

~~SECRET~~

To : SAC DIVISION IV [REDACTED] (S) ^{LI} Date 6/18/87

From : SA [REDACTED] [REDACTED] (S) ^{LI}

Subject : TODD PATTERSON;

LI [REDACTED] (S)
(OO: NEWARK)

THIS COMMUNICATION IS
CLASSIFIED SECRET IN
ITS ENTIRETY

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
EXCEPT WHERE SHOWN
OTHERWISE

Classified by see below
Declassify on: OADR/1/1/89
Cenote 20025; 20074

LI

[REDACTED] the above
SUBJECT AT ADDRESS OF 16 MORNING SIDE AVENUE, NORTH
HALEDON, NEW JERSEY, 07035. [REDACTED]

(S) LI

LI

INVESTIGATION BY NEWARK DIVISION REVEALED
THAT SUBJECT WAS A 12 YEAR OLD BOY (IN 1984)
AND IN THE Seventh GRADE AT THE MOST BLESSED
SACRAMENT SCHOOL IN FRANKLIN LAKES, N.J. NEWARK
INDICATED THAT SUBJECT HAD WRITTEN TO ABOUT
170 FOREIGN COUNTRIES FOR INFORMATION FOR A
SCHOOL PROJECT. (S) (X) (u)

For information CLASSIFIED BY GK
DECLASSIFY ON: OADR

LI

1- NY
1- NY

SECRET

(A14)

SEARCHED	INDEXED
SERIALIZED	FILED
JUN 18 1987	
NEW YORK	

Filed: January 8, 1990

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 89-5342 and 89-5781

TODD PATTERSON, A MINOR suing by his
father, EDGAR PATTERSON

vs.

FEDERAL BUREAU OF INVESTIGATION,
JOHN DOE, an unknown employee of the
United States Government and JOHN DOE
AGENCY, an unknown agency of the United
States Government

Todd Patterson

Appellant in Nos. 89-5342
and No. 89-5781

Appeal from the United States District Court
for the District of New Jersey
(D.C. Civil No. 88-2319)

Argued

November 9, 1989

Before: MANSMANN and GREENBERG,
Circuit Judges, and

GAWTHROP, *District Judge*.*

Opinion filed: January 8, 1990

* Honorable Robert S. Gawthrop, III, of the United States District Court for the Eastern District of Pennsylvania, sitting by designation.

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Washington, D.C. 20530

**COUNSEL FOR FEDERAL BUREAU
OF INVESTIGATION**

OPINION OF THE COURT

MANSMANN, *Circuit Judge.*

These appeals were born of the ambitious efforts of a sixth grade elementary school student who, in the lawful exercise of his constitutional rights, caused himself to be the subject of an investigation by the Federal Bureau of Investigation ("FBI"). The appeals constitute yet another illustration of the competing need for disclosure of information by government agencies and the need to prevent injury to the national security.

Todd Patterson ("Todd") appeals from the district court's orders granting summary judgment to the FBI

and denying his post-trial motion filed pursuant to Federal Rule of Civil Procedure 60(b).¹ We hold that the information Todd seeks from the federal agency was properly exempt from disclosure. Therefore, we will affirm the judgment of the district court.

I.

In 1983, Todd, then a sixth grade elementary school student, embarked on a precocious endeavor to write an encyclopedia of the world as part of a school project. Deciding that his school's resources were inadequate, Todd wrote to 169 countries requesting information. Significantly, Todd enclosed much of this correspondence in envelopes bearing the return address of Laboratory Disposable Products, a business Todd's parents operated from their home.

The flood of international correspondence engendered by the project attracted the attention of the FBI by means and methods undisclosed by the FBI. In late 1983, an FBI agent appeared unannounced at Todd's home. The agent spoke to Todd's parents concerning Todd's activities and was shown the correspondence received in response to Todd's requests. Soon after the visit, Todd contacted the FBI agent and spoke with him regarding the school project and the information requests to other countries.

As a result of the school project and the visit by the FBI agent, the FBI came to maintain a file on Todd.² The file contained a directive for the FBI's Newark Division to conduct an appropriate investigation of

1. The appeals, filed separately from each order, were consolidated for disposition by order of the Clerk.

2. The parties dispute the actual number of files. It is clear from the record that at least one file was created. Todd, however, insists that at least six files exist. This was also the district court's conclusion.

Laboratory Disposable Products in accordance with Attorney General Guidelines. Also included in the file is a memorandum, prepared on or about February 23, 1984, that changed the subject heading from "Laboratory Disposable Products" to "Todd Patterson." The memorandum contains a description of Todd's project and states "Newark indices as well as local criminal checks negative on subject" and "[i]n view of the above, Newark contemplates no further investigation in this matter." 705 F.Supp. 1033, 1037 (D.N.J. 1989).

The FBI maintains that it conducted no further investigation after 1983.³ However, a document released by the FBI dated December 5, 1985, along with five attachments not released, demonstrate that as of that date some entity of the United States Government continued to monitor Todd's activities. Todd insists that surveillance remained in effect because he continued to receive pieces of mail in damaged condition. In addition, Todd and his parents report hearing strange background noises on their telephones since 1983.

In April, 1987, Todd requested, pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (1982), access to records the F.B.I. in Washington, D.C. might be maintaining on him. Todd was informed that the information he requested was exempt from disclosure under 5 U.S.C. § 552(b)(1) and 5 U.S.C. § 552a(j)(2). Todd appealed the denial of his FOIA request to the Department of Justice, Office of Information and Privacy, where the determination was

3. Todd subsequently received an invitation from the Soviet Mission in New York to visit their facility, which he did after voluntarily contacting the FBI. He was requested to and did contact the FBI following his visit.

upheld. Thereafter, Todd filed a second FOIA request, this time directed to the FBI's Newark field Office.⁴

In May 1988, Todd initiated a civil suit against defendants FBI, John Doe (an unknown employee of the United States Government), and John Doe Agency (an unknown agency of the United States Government). Todd sought injunctive relief, damages, and disclosure of the requested documents. The complaint presented three distinct causes of action: (1) failure to comply with FOIA; (2) violations of the Privacy Act; and (3) violations of Todd's First and Fourth Amendment rights and of 18 U.S.C. § 1702 and 19 U.S.C. § 482, statutes relating to the U.S. Mail.

The FBI responded initially to the complaint by offering to expunge Todd's name from its records. The offer was never accepted.⁵ Thereafter, the FBI filed a motion for summary judgment on the first and second causes of action, reasserting that the requested information was exempt from disclosure. As to the third cause of action, the FBI moved to dismiss pursuant to Fed. R. Civ. P. 12(b)(2). Following oral argument on the motion and *in camera* review of the withheld documents, the district court granted summary judgment to the FBI on February 7, 1989, on all three causes of action.⁶ 705 F.Supp. 1033 (D.N.J. 1989). Todd thereafter filed a motion, pursuant to Fed. R. Civ. P. 60(b), to vacate the judgment or in the

4. FOIA requests made to the FBI are limited to files maintained at either the FBI headquarters or the individual field office where the request is made. Appellee's brief at 27.

5. The FBI indicated at oral argument that the offer remained open. Todd's position, voiced by his attorney, was that he was unwilling to accept the offer without first reviewing the documents.

6. Because it had considered matters outside the pleading, the district court considered the motion to dismiss the third cause of action as one for summary judgment. See *infra* part II.C.

alternative to supplement the record which was denied by the district court on August 18, 1989. We have jurisdiction to review the grant of a motion for summary judgment and the denial of a Rule 60(b) motion pursuant to 28 U.S.C. § 1291.

II.

A.

Todd challenges the procedures employed by the district court in its adjudication of the alleged FOIA violation. In particular, Todd contends that the record does not justify the district court's use of an *in camera* affidavit and its further *in camera* examination of withheld documents.

In *Lame v. United States Dept. of Justice*, 654 F.2d 917, 922 (3d Cir. 1981), we expressly authorized the use of *in camera* affidavits and submissions. We noted that in the ordinary case, "a *Vaughn* index correlating justifications for non-disclosure with the particular portions of the documents requested will generally suffice to narrow the disputed issues and permit a reasoned disposition by the district court." *Lame*, 484 F.2d 820, 827 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).⁷

However, there are cases, albeit unusual, where the preparation of a detailed *Vaughn* index would require an agency to disclose the very information that it seeks to withhold. Under these circumstances, we require an agency to submit a public affidavit setting forth, in as detailed terms as possible, the basis for the claimed exemption. *Lame*, 654 F.2d at 921. The district court must strive to make the public record as complete as possible, soliciting as much information

7. A *Vaughn* index is an affidavit which supplies an index of withheld documents and details the agency's justification for claiming exemption. See *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974).

as can be willingly released by the agency. If, however, "the agency is unable to articulate publicly the specific disclosure it fears and the specific harm that would ensue, then *in camera* inspection of a more detailed affidavit must be resorted to." See *Ferri v. Bell*, 645 F.2d 1213, 1224 (3d Cir. 1981), *opinion modified*, 671 F.2d 768 (3d Cir. 1982); *Phillippi v. Central Intelligence Agency*, 546 F.2d 1009, 1013 (D.C. Cir. 1976). Moreover, to the extent that any public affidavits may appear sufficiently descriptive, it may nonetheless be necessary for the district court to examine the withheld documents *in camera* to determine whether the agency properly characterized the information as exempt. 5 U.S.C. § 552a(4)(B); *Lame*, 654 F.2d at 921; *Ferri*, 645 F.2d at 1222; see also *Phillippi*, 546 F.2d at 1012 (FOIA clearly contemplates that courts will resolve fundamental issues in contested cases on the basis of *in camera* examination of relevant documents).

We believe the procedural events in the case *sub judice* are in accord with those procedures outlined above. In seeking discovery from the FBI, Todd propounded interrogatories questioning, *inter alia*, the internal investigatory procedures of the FBI and the identities of the persons and agencies assigned to Todd's case. The FBI provided answers to a few of the interrogatories, however, in most instances it claimed exemption from disclosure under the states military secrets privilege and 5 U.S.C. § 552(b)(1) and § 552(b)(7)(c) of the FOIA. In support of its claim of privilege, the FBI submitted the public affidavits of Special Agents Lieberman, Thomas, and Thorton. The purpose of the Thomas affidavit was to provide the district court with a *Vaughn* index for the records requested by Todd and withheld by the FBI. Lieberman's affidavit describes the withheld documents and sets forth justifications for those

withholdings under the FOIA. Lastly, the Thorton affidavit states that the Patterson premises had never been the subject of electronic surveillance and the FBI was innocent of opening or intercepting any mail directed to the Pattersons.

Ostensibly, the district court found that these affidavits constituted sufficient proof of the privileged nature of the withheld information, for it was not until after oral argument on the FBI's motion for summary judgment that *in camera* inspection was ordered. Indeed, the district court's order directing the *ex parte* review indicated the following:

because certain issues were raised in oral argument that were not adequately addressed in the supporting papers, I have concluded that *in camera* inspection of certain withheld documents is required in order for this Court to assure itself that the FBI has acted in good faith with regard to its investigation of Todd Patterson, that the FBI complied with all relevant government regulations, and that the FBI engaged in no illegal conduct.

This *in camera* review was necessary with respect to only two documents.

The FBI complied with the order by submitting *all* of the unredacted documents at issue as well as the declaration of James Geer, the FBI Assistant Director in charge of the Intelligence Division. Geer's declaration was provided as "an explanatory affidavit that goes into more detail than the public affidavits." The FBI also filed publicly the Declaration and Claim of Privilege of Attorney General Thornburgh so as to assert formally the state secrets privilege.⁸

8. The state secrets privilege was first recognized in *United States v. Reynolds*, 345 U.S. 1 (1953). As explained by the Court,

[i]t may be possible to satisfy the court, from all the circumstances of the case, that there is a reasonable

Thus, the public record consisted of certain redacted documents initially released by the FBI, a few answers to interrogatories, and four affidavits. Not surprisingly, these materials did not allay Todd's interest in the FBI's files. Under the circumstances, however, we believe the public submissions represent a good faith effort by the FBI to provide as much access to the information as possible. We can appreciate Todd's objections to the anomalous situation of having to defend against a motion for summary judgment without being privy to the very documents necessary for such a defense. The Court of Appeals for the D.C. Circuit, which has considered a significant number of FOIA cases, has commented on how this "lack of knowledge by the party seeing [sic] disclosure seriously distorts the traditional adversary nature of our legal system's form of dispute resolution." *Vaughn*, 484 F.2d at 824.⁹ However, the remedy for the unfairness is an *in camera* examination by the trial court of the withheld documents and any supporting or explanatory affidavits. Inasmuch as the record was

danger that compulsion of the evidence will expose military matters which, in the interest of national security, should not be divulged. When this is the case, the occasion for the privilege is appropriate, and the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.

345 U.S. at 10.

9. We note that notwithstanding this imbalance between the parties, the D.C. Circuit, as well as other circuits, have allowed the use of *in camera* affidavits in national security cases. See e.g., *Molerio v. F.B.I.*, 749 F.2d 815 (D.C. Cir. 1984); *Fitzgerald v. Penthouse Intern., Ltd.*, 776 F.2d 1236 (4th Cir. 1985); *Jabara v. Webster*, 691 F.2d 272, 279 (6th Cir. 1982), *cert. denied*, 464 U.S. 863 (1983); and *Hayden v. N.S.A.*, 608 F.2d 1381 (D.C. Cir. 1979).

made as complete as possible in this instance, we hold that the proper predicates for accepting records and affidavits *in camera* were satisfied in this case.

Irrespective of the district court's *in camera* review, Todd argues that summary judgment should not have been granted because the FBI failed to sustain its burden to show the sensitive nature of its withheld documents. In reviewing the grant of summary judgment in proceedings seeking disclosure of records under the FOIA, this court's scope of review is two-fold: we must determine whether the district court had an adequate factual basis for its decision and whether its conclusion was clearly erroneous. *Cuccaro v. Secretary of Labor*, 770 F.2d 355 (3d Cir. 1985); *Lame v. United States Dept. of Justice*, 767 F.2d 66 (1985).

The FBI invoked two exemptions in support of its denial of Todd's FOIA request. The first exemption provides that documents which are "specifically required by Executive Order to be kept secret in the interest of the national defense or foreign policy," are exempt from disclosure. 5 U.S.C. § 552(b)(1)(1982). In support of its position, the FBI submitted the Thomas affidavit which identifies the relevant Executive Order in this case as being the Executive Order on National Security Information, No. 12356, 3 C.F.R. 166 (1983). Reviewing the Thomas affidavit in conjunction with Executive Order 12356, the district court found, and we agree, that the FBI adhered to the procedural requirements of the Executive Order when the withheld FOIA material was classified.

Next, the affidavit indicates that the documents sought by Todd contain information made eligible for classification by § 1.3(a)(4) of the Executive Order. Particularly, § 1.3(a)(4) provides that information shall be considered for classification if it concerns "intelligence activities (including special activities), or intelligence sources or methods." 3 C.F.R. 169. This section must be read in conjunction with § 1.3(b):

Information that is determined to concern one or more of the categories in Section 1.3(a) shall be classified when an original classification authority also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

Id.

The remainder of the affidavit includes Thomas' description of the documents, the location of the classified portions, and his assertions that the material satisfies the classification criteria of § 1.3(a)(4) and ultimately presents a threat to the national security. The district court found Thomas' assertions deficient in only two respects. The district court found his references to Documents No. 4 and 5 to be unduly vague and repetitive. Upon *in camera* inspection of the material, however, the court was convinced that release of the withheld material reasonably could be expected to cause damage to the national security.

We conducted our own *in camera* review of the documents and accompanying Geer affidavit, mindful that when dealing with documents to which § 552(b)(1) applies courts are expected to accord "substantial weight" to the agency's affidavit. See *American Friends Serv. Com. v. Department of Defense*, 831 F.2d 441, 444 (3d Cir. 1987); see also S. Rep. No. 1200, 93d Cong. 2d Sess. 12 (1974), reprinted in 1974 U.S. Code Cong. & Admin. News 6267, 6290. We find that the district court's decision has an adequate factual basis and even on a plenary review we agree with it.¹⁰

10. On the basis of our *in camera* review of the documents we have no hesitation in stating that there is nothing derogatory in them regarding Todd or any member of his family.

The second exemption invoked by the FBI was § 552(b)(7)(c), which exempts from disclosure:

- (7) investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would

...

- (c) constitute an unwarranted invasion of personal privacy . . .

5 U.S.C. § 552(b)(7)(c).

In considering this claim, the district court was required to engage in a *de novo* balancing test: "weighing the public benefit which would result from the disclosure against the privacy interest and the extent to which it is invaded." *Cuccaro*, 770 F.2d at 359. In view of its finding that the FBI had not participated in any illegal conduct, the district court concluded that only a negligible benefit would inure to the public by releasing the names of FBI personnel. As a result of our independent examination of the documents, we find that the district court's conclusion is correct.

Todd also maintains that the blanket exemption from release of the requested documents and the Geer affidavit was overbroad, and that all segregable, non-sensitive portions of the withheld documents should have been released. Our rule in this circuit is that, in response to a FOIA request, "[a]ny reasonably segregable, non-exempt portion of a record is to be made available to the person requesting that record." *Lame*, 654 F.2d at 921. In this case, the FBI did release certain papers in which extensive redaction was necessary. Those documents completely withheld were simply inappropriate for partial redaction, except in one instance. The Geer affidavit contains some non-classified portions which could have been disclosed. Responding to questions propounded by

this court at oral argument, the FBI admitted that the entire Geer affidavit need not have been withheld. However, the FBI explained that the non-classified parts of that document were available to Todd and disclosure would be made upon request. We are not convinced that earlier disclosure of these non-classified parts would have affected the outcome of the case. Future disclosure will at least assuage some of Todd's curiosity.¹¹

B.

Todd argues that the FBI violated his rights under the Privacy Act, 5 U.S.C. § 552a(e)(7) by collecting information about his protected correspondence with foreign governments and by maintaining records of his protected activity in permanent, retrievable files indexed to his name. The FBI counters with the assertion that under § 552a(e)(7) of the Act the requested records are exempt from disclosure.¹² Concluding that the records were entitled to exemption, the district court granted the FBI summary judgment on the second cause of action of Todd's complaint.

Our scope of review of the district court's determination with respect to disclosure under the Privacy Act on summary judgment is the same as that utilized initially by the district court. We must decide

11. The district court denied Todd's request to have his attorney present at the *in camera* proceedings. Although Todd alleges error on appeal, we find that the issue merits no further discussion.

12. The FBI's counter-argument in the district court was that its central record system is exempt under § 552a(j)(2). The district court rejected this contention, finding that the FBI had failed to show that its records on Todd were compiled specifically for purposes of a criminal investigation. This particular argument has been abandoned by the FBI on appeal.

whether there exists a genuine issue as to any material fact in dispute, assuming resolution of any disputed fact in favor of the party opposing the motion, and determine whether the moving party is entitled to judgment as a matter of law. *Cuccaro*, 770 F.2d at 357.

Initially, and as a question of first impression in this circuit, we must interpret the meaning of a portion of § 552a(e)(7). Section 552a(e)(7) prohibits federal agencies from maintaining records "describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained *or unless pertinent to and within the scope of an authorized law enforcement activity.*" 5 U.S.C. § 552a(e)(7) (emphasis added). The precise meaning of the emphasized portion is not defined by the statute itself. The district court compared the decisions of other circuits which have interpreted this particular section and adopted a rule requiring agencies "to demonstrate that any and all records maintained on an individual's exercise of First Amendment rights are *relevant* to an authorized law enforcement activity of the agency, and that there exists a sufficient basis for the maintenance of such records." 705 F.Supp. at 1043 (emphasis in original). It is this definition that the parties now dispute. Todd argues that agencies should be made to show a "substantial relationship" between the records and the government activity. He insists that a "relevancy" standard acts to dilute his First Amendment rights.

Congress's intent, as revealed in the statute's legislative history, is for § 552a(e)(7) to prevent "collection of protected information not immediately needed, about law-abiding Americans, on the off-chance that Government or the particular agency might possibly have to deal with them in the future." S. Rep. No. 1183, 93d Cong., 2d Sess., *reprinted in* 1974 U.S. Code Cong. & Admin. News 6916, 6971. The history also instructs:

that the kind of information about individuals which an agency seeks to gather or solicit, and the criteria for programs to investigate individuals will be judged by an official at the highest policy making level to be *relevant* and necessary to a statutory purpose of the agency.

1974 U.S. Code Cong. & Admin. News 6916, 6960 (emphasis added).

Only four court of appeals have expressed an opinion as to the standard warranted when evaluating a claim under § 552a(e)(7). The Court of Appeals for the Fourth Circuit has held that Section (e)(7) is violated "to the extent that the [agency] has engaged in the practice of collecting protected information, unconnected to any investigation of past, present or anticipated violations of the statutes which it is authorized to enforce..." *Clarkson v. I.R.S.*, 678 F.2d 1368, 1375 (4th Cir. 1982), *cert. denied*, 481 U.S. 1031 (1987). A case-by-case analysis of whether an agency's actions were pertinent to authorized law enforcement activity was adopted by the court in *MacPherson v. I.R.S.*, 803 F.2d 479 (9th Cir. 1986). Section (e)(7) was interpreted by the Sixth Circuit as allowing "investigation with respect to the exercise of first amendment rights if such investigation is *relevant* to an authorized criminal investigation or to an authorized intelligence or administrative one." *Jabara v. Webster*, 691 F.2d 272, 279 (6th Cir. 1982), *cert. denied* 464 U.S. 863 (1983) (emphasis added). The *Jabara* standard was adopted in *Nagel v. U.S. Dept of Health, Education and Welfare*, 725 F.2d 1438, 1441 n.3 (D.C. Cir. 1984).

In our view, a relevancy standard is more consistent with Congress's intent and will prove to be a more manageable standard than employing one based on ad-hoc review. The weight of authority supports a rule requiring a federal agency to establish some nexus

between its files and classified activities. A burden as heavy as that suggested by Todd has never been imposed. We, therefore, hold that a federal agency defending its maintenance of records under Section (e)(7) must demonstrate that its records on an individual's exercise of First Amendment rights are relevant to an authorized law enforcement activity of the agency. Thus, the district court's interpretation of the section was legally correct.

Applying this standard to the FBI's records, especially the Geer affidavit, we are persuaded, as was the district court, that the records maintained by the FBI on Todd's exercise of First Amendment rights are relevant to an authorized law enforcement activity of the FBI. Continued maintenance of such records also will not violate any provision of the Privacy Act. Accordingly, with no issue of material fact to resolve, the district court properly entered summary judgment.

C.

The FBI filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(2) as to Todd's third cause of action, arguing that in actions instituted in federal court under federal law, courts have eliminated fictitious defendants by motion. In his motion in opposition to the summary judgment motion, Todd maintained that pleading fictitious defendants was allowable until such time as the real parties in interest, who could only be identified through further discovery, could be substituted. The district court found, as a matter of fact, that the FBI and any FBI or other government employees involved in activities concerning Todd had acted in accord with all applicable statutory, regulatory, and administrative guidelines. Further, the district court held that the FBI had properly invoked the state secrets privilege in defense to Todd's interrogatories. Because these findings were made by considering matters outside the pleadings, *i.e.*,

documents submitted for *in camera* review, the district court converted the motion to dismiss into one for summary judgment, as is authorized for Rule 12(b)(6) motions, and entered judgment in favor of the FBI. Todd contends that in treating the Rule 12(b)(2) motion as one for summary judgment, the district court denied him the opportunity to properly defend his position on the merits. The FBI concedes procedural error but insists that it is "plainly harmless."

We have had occasion to consider the procedural distinction between a Rule 12(b)(6) motion and a Rule 12(b)(2) motion. In *Time Share Vacation Club v. Atlantic Resorts, Ltd.*, 735 F.2d 61 (3d Cir. 1984), we explained the mechanics of a Rule 12(b)(2) motion as follows:

A Rule 12(b)(2) motion, such as the motion made by the defendants here, is inherently a matter which requires resolution of factual issues outside the pleadings, i.e. whether in personam jurisdiction actually lies. Once the defense has been raised, then the plaintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence. Contrary to the dissent's suggestion, therefore, at no point may a plaintiff rely on the bare pleadings alone in order to withstand a defendant's Rule 12(b)(2) motion to dismiss for lack of in personam jurisdiction. See *International Ass'n of Machinists & Aerospace Workers v. Northwest Airlines*, 673 F.2d 700 (3d Cir. 1982). Once the motion is made, plaintiff must respond with actual proofs, not mere allegations.

Time Share Vacation Club, 735 F.2d at 67 n.9.

In support of its motion, the FBI submitted the Thornton, Thomas and Lieberman affidavits and its answers to interrogatories. Following oral argument on

the motion, the FBI produced the Geer affidavit and the total collection of withheld documents. These materials, they contended, clearly evidenced the nonparticipation of the FBI in any mail cover activity. To the extent that the materials revealed the identities of another agency or agencies whose operations concerned Todd's mailings, the FBI asserted the state secrets privilege to prevent disclosure. Todd's case consisted of the affidavits of himself and his mother asserting that he had received damaged mail.

A careful reading of the district court's opinion suggests that the court by implication decided that an action could at least be initiated against a John Doe defendant. Such a determination, however, begs the question whether Todd could receive any further meaningful discovery, so as to ultimately identify the real parties in interest, in light of the FBI's assertion of the state secrets privilege. Finding that "a 'reasonable danger' that harm to the national interest will ensue if defendants are forced to comply with plaintiff's discovery requests," the district court held that the state secrets privilege had been properly invoked. 705 F.Supp. 1046. The district court then reasoned that if the record contained no evidence of abuse by the FBI, and the privilege applied to other information known to the FBI, then the case presented no issue of material fact and should be dismissed accordingly.

A Rule 12(b)(2) motion cannot be treated as one for summary judgment. There are situations, however, where "the question of the district court's jurisdiction [is] entwined with the ultimate question on the merits." *International Ass'n of Machinists v. Northwest Airlines*, 673 F.2d 700, 710 (3d Cir. 1982). In such circumstances, it may be necessary for the district court "to proceed to a decision which impacts on the merits." *Id.*; see also *Land v. Dollar*, 330 U.S. 731, 739 (1947)(district court had jurisdiction to determine its jurisdiction by proceeding to a decision on the merits).

The facts of this case present this type of complicated review. At the time the Rule 12(b)(2) motion was filed, Todd had already received certain redacted papers, three affidavits and answers to interrogatories. After *in camera* review of the withheld documents, the district court concluded that Todd could not secure any further discovery. The John Doe defendants would thus remain unknown. Since the suit could not be maintained against a fictitious party, the district lacked in personam jurisdiction.

We find it insignificant that the district court treated the Rule 12(b)(2) motion as one for summary judgment and dismissed the cause of action for lack of a genuine issue of material fact.¹³ Such a finding is beyond the initial and necessary inquiry of whether in personam jurisdiction actually lies. The FBI's evidence, both public and *in camera* materials, convinces us that (1) the FBI is not one of the John Doe defendants, and (2) the FBI is shielded from further disclosure by the state secrets privilege. Todd thus failed to sustain his burden of proof in establishing in personam jurisdiction. Accordingly, the cause of action was properly dismissed.

D.

An order denying a motion for relief from judgment pursuant to Fed. R. Civ. P. 60 is reviewed for abuse of discretion. *Laskey v. Continental Products Corp.*, 804 F.2d 250 (3d Cir. 1986). In view of the facts of this case, we find no evidence that the district court abused its discretion in denying Todd's Rule 60(b) motion.

13. We can affirm, if the result reached by the district court is correct, even though our reasoning differs from that of the district court. See *Tunnell v. Wiley*, 514 F.2d 971, 975 n.4 (3d Cir. 1975).

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III.

For the foregoing reasons, we will affirm the judgment of the district court in both appeals.

A True Copy:

Teste:

*Clerk of the United States Court of Appeals
for the Third Circuit*

APPENDIX 2.—GAO REPORT TO CHAIRMAN EDWARDS FOLLOWING THE
JUNE 22, 1989, HEARING

United States General Accounting Office

GAO

Report to the Chairman, Subcommittee
on Civil and Constitutional Rights,
Committee on the Judiciary, House of
Representatives

September 1990

INTERNATIONAL TERRORISM

FBI Investigates Domestic Activities to Identify Terrorists





United States
General Accounting Office
Washington, D.C. 20548

General Government Division

B-232891

September 7, 1990

The Honorable Don Edwards
Chairman, Subcommittee on Civil
and Constitutional Rights
Committee on the Judiciary
House of Representatives

Dear Mr. Chairman:

This report responds to your February 1, 1988, request that we review the Federal Bureau of Investigation (FBI) international terrorism program. We also address specific questions in your July 27, 1989, letter about our detailed file review. Unfortunately, data access issues both impeded our progress and limited our ability to draw conclusions.

As you know, the FBI removed ("redacted") information it considered sensitive from the files before we were granted access to them. The redaction procedures were time consuming and delayed issuance of this report. Given that the FBI redacted the closed files before we reviewed them, we were limited in our ability to develop overall conclusions regarding the FBI's international terrorism program. The questionnaire and case file data clearly demonstrated that the FBI did engage in monitoring of First Amendment-type activities during its international terrorism investigations. However, we are not able to determine if the FBI infringed First Amendment rights when monitoring these activities or if the FBI had a reasonable basis to monitor such activities.

Unless you publicly announce the contents earlier, we plan no further distribution of this report until 30 days from the date of issuance. At that time, we will send copies of the report to the Attorney General and the FBI Director. Upon request, we will send copies to other interested parties.

Major contributors to this report are listed in appendix IV. Please contact me at 275-8389 if you have any questions concerning the report.

Sincerely yours,

A handwritten signature in cursive script that reads "Lowell Dodge".

Lowell Dodge
Director, Administration
of Justice Issues

Executive Summary

Purpose

In carrying out its responsibilities for investigating possible terrorist activities, the Federal Bureau of Investigation (FBI) must balance its investigative needs against the need to respect individuals' First Amendment rights, such as the freedom of speech and the right to peaceably assemble. The difficulties in trying to balance between the two was exemplified in an investigation of the Committee in Solidarity with the People of El Salvador (CISPES). According to the FBI, it opened an investigation on the basis of an informant's information that CISPES was involved in terrorist activities. CISPES alleged that the FBI investigated it because it opposed the Reagan administration's Central American policies. The release of documents obtained under the Freedom of Information Act raised questions about the FBI monitoring of American citizens exercising their First Amendment rights.

Because of the issues raised about the FBI's investigation of CISPES, the Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, asked GAO to review the FBI's investigation of possible international terrorism activities to determine

- the basis on which the FBI was opening investigations,
- the scope and results of the investigations,
- whether the FBI had monitored First Amendment activities during the investigations, and
- the reasons the investigations were closed.

Background

The FBI is responsible for detecting, preventing, and reacting to international terrorism activities that involve the unlawful use of force or violence to try to intimidate a government or its civilian population for political or social objectives. The FBI maintains a general index system in support of its investigative matters. The FBI identifies various information it obtains during its investigations and enters it into the system for future retrieval. This process, known as indexing, records such information as individuals' and organizations' names, addresses, telephone numbers, and automobile license plate numbers. The FBI has policies governing indexing and the period of time indexed information is retained.

The allegations raised about the FBI's CISPES investigation prompted an internal FBI inquiry of that investigation. The internal study found that the FBI had properly opened the investigation, but the study also found that the FBI had substantially and unnecessarily broadened the scope of the investigation and had mismanaged the investigation. In response to

Executive Summary

the study's finding, the FBI Director implemented a number of policy and procedure changes regarding international terrorism investigations.

Between January 1982 and June 1988, the FBI closed about 19,500 international terrorism investigations. The FBI completed GAO questionnaires about various aspects of 1,003 cases randomly selected by GAO (e.g., the reasons cases were opened and closed, the subjects of investigations, the monitoring of First Amendment activities, and the use of indexing). GAO is generalizing the results of its questionnaire analyses to an adjusted universe of 18,144 closed international terrorism cases.

On the basis of the questionnaire responses, GAO randomly selected 150 cases for review. Eight more cases were added at the request of the Subcommittee. (See p. 35.) However, the FBI limited GAO's access to data by removing from the case files information it believed could potentially identify informants, ongoing investigations, and sensitive investigative techniques. The FBI also removed information it received from other agencies.

Results in Brief

GAO estimates that about half of the 18,144 cases were opened because the FBI suspected that individuals or groups were involved in terrorist activities. U.S. citizens and permanent resident aliens were the subjects in 38.0 percent of the 18,144 cases. The FBI monitored First Amendment-type activities in about 11.5 percent of these 18,144 cases. The FBI indexed information about (1) individuals who were not the subjects of the investigations in about 47.8 percent of the cases and (2) groups not the subjects of the investigations in about 11.6 percent of the cases. The FBI closed about 67.5 percent of the cases because it did not develop evidence to indicate that the subjects were engaging in international terrorist activities.

The questionnaire and case file data show that the FBI did monitor First Amendment-type activities during some of its international terrorism investigations. Because of the limitations placed on its access to files, however, GAO cannot determine if the FBI abused individuals' First Amendment rights when it monitored these activities or if the FBI had a reasonable basis to monitor such activities.

GAO's Analysis

Reasons Cases Were Opened

From an adjusted universe of 18,144 closed international terrorism investigations from January 1982 to June 1988, GAO estimates that the FBI opened 9,507 cases (52.4 percent) because it had obtained information indicating that someone was engaged in or planning international terrorist activities. (See p. 17.)

The reasons cases were opened were essentially those stated in broad categories listed on GAO's questionnaires, which were completed by FBI personnel. To develop more detailed descriptions of the reasons cases were opened, GAO reviewed 158 cases and identified whether the information in the files indicated that the subject was or may have been (1) involved in or planned a terrorist act, (2) a leader or member of a terrorist group, or (3) associated with or linked to a terrorist group. The results of GAO's review showed that the FBI opened 70 of the 158 cases because of information indicating the subjects were associated with or linked to a terrorist group. For example, the information obtained may have indicated that the individual's phone number had been called by another person under investigation. Of these 70 cases, U.S. citizens and permanent resident aliens were the subjects in 37 cases. (See pp. 18 and 19.)

Monitoring of First Amendment Activities

The FBI observed First Amendment-type activities to obtain information about the subjects of investigations. Information on such activities was also obtained through informants or from other law enforcement agencies.

On the basis of its questionnaire results, GAO estimates that the FBI monitored or observed First Amendment activities in 2,080 (11.5 percent) of its international terrorism cases. Of these 2,080 cases, 951 were investigations of U.S. citizens or permanent resident aliens. (See pp. 20 and 21.)

Indexing of Names in Terrorism Investigations

On the basis of its questionnaire results, GAO estimates that the FBI indexed information about individuals, other than the subjects of investigations, in 8,671 (47.8 percent) of its international terrorism cases. Of these 8,671 cases, 3,354 were cases involving indexing of U.S. citizens or permanent resident aliens. Similarly, GAO estimates that 2,105 cases involved indexing of groups during the investigations. Of these 2,105

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cases, 913 were cases involving indexing of groups with U.S. citizens or permanent resident aliens. (See pp. 23 and 24.)

Reasons Cases Were Closed

GAO estimates that the FBI closed 12,240 cases (67.5 percent) because it found no evidence linking the subject to international terrorist activities. Of the investigations, another 4,015 cases (22.1 percent) were closed because the subject moved or could not be located. The remaining 1,889 cases (10.4 percent) were closed for other reasons, such as the subject was arrested or the case was transferred to another FBI field office. (See pp. 25 and 26.)

Recommendations

The FBI removed information it considered sensitive from the closed case files before giving the files to GAO to review. Further, the FBI denied GAO access to open cases. Because of these limitations — information being removed from the files and no access to open cases — GAO is not making any recommendations. Also, GAO could not evaluate changes the FBI had made to its international terrorism program because of the lack of access to open cases.

Agency Comments

GAO requested, but did not receive, written FBI comments on the report. However, GAO discussed the report with FBI officials who generally agreed with the facts. GAO incorporated other views of the officials where appropriate.

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Abbreviations

ARMS	Automated Records Management System
CISPES	Committee in Solidarity with the People of El Salvador
FBI	Federal Bureau of Investigation
FOIMS	Field Office Information Management System
OIPR	Office of Intelligence Policy and Review
OPEA	Office of Program Evaluations and Audits
TIS	Terrorism Information System
TRAC	Terrorist Research and Analytical Center

Introduction

The First Amendment of the Constitution of the United States guarantees certain rights, among which are the freedom of speech and the right to peaceably assemble. In exercising these rights, individuals are allowed to voice their disagreement with the policies and practices of the government. Their disagreement can take the form of a demonstration or march to show support for their cause without fear of reprisal or interference from anyone when exercising these rights.

The Federal Bureau of Investigation (FBI) is responsible for, among other matters, conducting investigations of people suspected of engaging in international terrorist activities, which is the unlawful use of force or violence to intimidate a government or its population for political or social objectives. However, national security concerns have to be carried out in such a way that individuals' First Amendment rights are not violated. The difficulty the FBI faces in trying to balance its responsibilities without violating individuals' personal liberties was exemplified in a case involving the Committee in Solidarity with the People of El Salvador (CISPES).

CISPES alleges that the FBI investigated it, its members, and groups that were associated with it solely for the political reason that they were opposed to President Reagan's Central American policies. According to the FBI, at the request of the Department of Justice, it opened a criminal investigation of CISPES in September 1981 to determine if CISPES was required to register under the Foreign Agents Registration Act. The investigation did not find a violation of the act but indicated that CISPES verbally supported the opposition movement. The FBI subsequently closed the investigation in February 1982. However, the FBI continued to collect information about CISPES from an informant. The informant said that CISPES was involved in international terrorism or acts in support of or preparation for international terrorism. Consequently, the FBI opened an international terrorism investigation on CISPES in March 1983. During the investigation, the FBI conducted surveillance of CISPES and other groups associated with it. The FBI closed the international terrorism investigation in June 1985 because it found no evidence of CISPES involvement in international terrorist activities.

The Center for Constitutional Rights, a New York-based lawyers group representing CISPES, released information it had obtained from its Freedom of Information Act request regarding the FBI's CISPES investigation. The release of these documents prompted allegations by the Center that the FBI had conducted extensive surveillance of American citizens opposed to the Reagan administration's policies in Central America.

These allegations resulted in an internal FBI inquiry of its CISPES investigation. The inquiry found that the FBI was justified in opening its CISPES investigation but that it mismanaged the investigation. For example, a background check on the informant was not done in accordance with normal procedures. In response to the findings reflected in the CISPES report, the FBI Director implemented 33 policy and procedure changes regarding international terrorism, according to the Assistant Director, Inspection Division. These changes included (1) changing the system for handling and managing informants; (2) modifying the Attorney General's Foreign Counterintelligence Guidelines; (3) rectifying the shortcomings in the FBI's decision-making review and approval processes; (4) developing written guidance concerning activities protected by the First Amendment and the collection and preservation of printed public source materials; (5) establishing a system to ensure that all field office requests about guidance, particularly those about justification, focus, and use of sensitive techniques, be brought to the attention of higher level Bureau officials; and (6) changing other day-to-day operations about general FBI policies, training, and internal inspection programs.

Because of the allegations about the FBI's investigation of CISPES, the Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, asked us to review the FBI's investigations of individuals and monitoring of First Amendment activities with respect to the FBI's international terrorism program.

The FBI's International Terrorism Program

The FBI, under the direction of the Attorney General, is the lead federal agency responsible for preventing, interdicting, and investigating domestic and international terrorist activities. The focus of international terrorism investigations is to be on the unlawful activity of an individual or a group, not the ideological motivations of the individual or group members. The FBI collects information about individuals, group memberships, associations, movements, etc., that serves as a basis for prosecution and builds an intelligence database for future prevention of terrorist acts. According to its records, the FBI closed about 19,500 international terrorism cases between January 1, 1982, and June 30, 1988.

The FBI's international terrorism program is carried out under the auspices of the Counterterrorism Program.¹ The mission of the program is

¹Executive Order 12333, dated December 1, 1981, and related statutes provide the authority for the FBI, pursuant to regulations established by the Attorney General, to conduct counterintelligence activities both within and outside the United States.

to detect, prevent, and react to unlawful violent activities of individuals or groups whose intent is to (1) overthrow the government; (2) interfere with the activities of a foreign government in the United States; (3) impair the functioning of the federal government, a state government, or interstate commerce; or (4) deprive Americans of their civil rights.

The FBI uses the statutory definition of international terrorism, which is an unlawful use of force or violence against persons or property to intimidate or coerce a government, or the civilian population, for political or social objectives. International terrorism involves acts committed by groups or individuals who are foreign-based and/or directed by countries or groups outside the United States or whose activities transcend national boundaries.

Guidelines for Conducting International Terrorism Investigations

The Attorney General's Guidelines for Foreign Intelligence Collection and Foreign Counterintelligence Investigations establishes the principal investigative policies and criteria for conducting international terrorism investigations. The guidelines govern the type of investigation, basis for initiating the investigation, and the investigative techniques that can be used during the investigation. According to the guidelines, subjects of international terrorism investigations may be categorized as a foreign power, foreign officials, foreign visitor, or U.S. person. A U.S. person is defined as a U.S. citizen, a permanent resident alien, or an organization.² Additionally, the guidelines provide that U.S. citizens' rights are to be protected during the FBI's investigations.

International terrorism investigations are conducted at varying levels of investigative intensity. FBI policy requires that a basis of specific facts be established before it undertakes a complete, detailed investigation of individuals or groups. Upon initial receipt of an allegation, a review may be instituted to determine if a factual basis for the allegation exists. The FBI stated that specific restrictions are applied regarding the scope and investigative techniques that may be used. Of the approximately 19,500 closed international terrorism cases, about 18,200 were conducted to determine if further inquiry was warranted. The remaining 1,300 investigations were of a more detailed nature. Investigations may be initiated

²The Attorney General's Guidelines define U.S. person as a United States citizen; a permanent resident alien; an unincorporated association substantially composed of U.S. citizens or permanent resident aliens; or a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.

on individuals or groups that may be engaged in espionage, foreign intelligence gathering, or international terrorism; individuals who may be a target of a spy or an international terrorist; or on individuals to determine their suitability or credibility to assist the FBI in a particular activity or investigation.

Generally, investigations are initiated in field offices upon authorization by the Special Agent in Charge. However, according to FBI policy, field offices must obtain FBI headquarters approval before initiating investigations that can be characterized as: (1) investigations that could be harmful to U.S. foreign relations; (2) investigations that, if not monitored and reviewed at the headquarters level, could potentially have a chilling effect on the exercise of protected rights; and (3) investigations that circumstances indicate could compromise sensitive operations or raise questions of legality or propriety that should be addressed at FBI headquarters level.

FBI policy limits the investigative techniques that can be used to determine if a factual basis exists for a more detailed and complete investigation. FBI guidelines set forth specific techniques that may be used and limit the extent to which they may be employed. Additionally, other investigative techniques, which otherwise could be lawfully employed, are prohibited by policy during this stage of the investigation. FBI guidelines set forth field office reporting requirements based on the duration of the investigation. All international terrorism investigations, regardless of the level of investigative intensity, are to be terminated upon determination that the reason for which they were initiated no longer exists, has been resolved, or because further efforts would not reasonably resolve the allegation or predication.

OIPR's Review of Investigations on U.S. Persons

When the subject of the investigation is a U.S. person, copies of summary memoranda are to be sent to the Department of Justice's Office of Intelligence Policy and Review (OIPR) for review. OIPR, operating with a staff of 11, has oversight responsibility for ensuring that all investigations of U.S. persons are in compliance with the Attorney General's guidelines. The memoranda are reviewed by OIPR to determine whether the facts, as reported in the memorandum, satisfy the requirements of the Attorney General's guidelines. If, in OIPR's opinion, the information does not appear to meet the standards of the guidelines, it would explain to the FBI what information is lacking and might suggest the additional information or clarification that is needed.

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According to the Counsel for Intelligence Policy, OIPR, it does not tell the FBI what cases should or should not be investigated. OIPR advises the FBI on whether the information presented in the summaries is sufficient to meet the Attorney General's guidelines. If the FBI continued an investigation that OIPR believed was not warranted, OIPR could make a recommendation to the Attorney General that he direct the FBI to stop the investigation. According to the Counsel, OIPR has never made such a recommendation.

Investigative Files

Information gathered during an international terrorism investigation is to be catalogued in investigative files. The files are to contain all material, evidence, or documents collected during the investigation. Each piece of correspondence, report, or other document that is placed in the case files is to be sequentially numbered, which the FBI refers to as serials. An international terrorism case may contain any number of files³ of information collected during the investigation. The size of each file may vary from case to case or even within the same case. According to FBI officials, the size of a file is not determined by any set criteria or guidelines. Therefore, the staff preparing the files determines when to start another.

The FBI's "Records Retention Plan and Disposition Schedule" contains the policy for the destruction of investigative files. The retention guidelines require that FBI headquarters files and records for criminal-related investigations, such as international terrorism cases, are to be destroyed after having been closed for 20 years and that field offices should destroy criminal-related files after 10 years.

Indexing Guidelines

The guidelines governing the administrative handling of investigations require that the FBI case agent identify certain information and evidence collected during the investigation and enter it into an information system so that it can be retrieved for future reference. This process is known as indexing. The purpose of indexing is to record information relevant and necessary to carry out the purpose of the investigation, such as individual names, organizational names, telephone numbers, addresses, and automobile license plate numbers.

Two types of information may be indexed—subject and reference data. Subject data includes all relevant information about the subject, such as

³The FBI refers to files as volumes.

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aliases, date of birth, and property (e.g., automobiles and real estate). Reference data includes information that is similar to subject data but is information about individuals or organizations who were not the subject of the investigation.

For both subject and reference data, two types of indexing criteria—mandatory and discretionary—are used. For example, the mandatory indexing criteria require that case title information (e.g., individual names and aliases or organizational names) be indexed as well as the names of persons who have been subpoenaed in an FBI investigation or persons who are targets of electronic surveillance. Discretionary indexing may include (1) individuals suspected of committing crimes, (2) the subject's close relatives and associates, (3) witnesses or other individuals contacted by the FBI, or (4) property. The indexing guidelines emphasize that discretionary indexing is a very subjective decision-making process.

According to the indexing guidelines, not all witnesses or persons interviewed or contacted by the FBI are to be routinely indexed. The information should contain as much related identifying or descriptive data as possible. Identifying data includes such items as birth date, sex, race, or Social Security number. Descriptive data includes such things as height, weight, scars and marks, color of eyes, color of hair, and address.

FBI field agents or headquarters personnel mark the documents to indicate what information is to be indexed. The agent is responsible for circling or underlining, or instructing clerical staff to circle or underline, any information that is covered by the mandatory indexing criteria. The agent is also responsible for underlining those names or other items appearing in the body of a document that are discretionary but that the agent deemed necessary for future retrieval. FBI headquarters personnel also are responsible for circling or underlining information for indexing on incoming documents that the field office staff have not already identified for indexing. The indexed information is to be retained as long as the investigative file is retained and is to be destroyed when the investigative files are destroyed.

Objectives, Scope, and Methodology

On February 1, 1988, the Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, asked us to review the FBI's international terrorism program. The Chairman was concerned that the FBI's investigation of CISPES was overly broad and not properly focused. Accordingly, he wanted us to determine if the FBI collected and reported

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information on First Amendment-type activities, as in the CISPES investigation. To address the Chairman's concern, we agreed to determine

- the basis on which the FBI was initiating international terrorism investigations;
- the scope and results of the investigations;
- whether the FBI had been monitoring First Amendment activities (such as demonstrations, meetings, speeches) during the investigations; and
- the reasons investigations were closed.

After our June 22, 1989, testimony⁴ about the progress and preliminary results of our review, in a July 27, 1989, letter, the Chairman requested that we address some additional specific questions during our analyses. The Chairman's primary concern in his July 1989 letter was that the FBI opened cases on the basis of information that indicated that the subjects of the investigations had only been associated with or linked to a terrorist group. His questions generally asked for additional information about cases of this type that we had reviewed; for example, how many involved monitoring of First Amendment activities, and how many were on U.S. persons. Responses to the Chairman's specific questions, which are not part of the information detailed in chapter 2 of this report, are in appendix IV.

We did our work at the FBI's headquarters office in Washington, D.C. We interviewed agency officials about the international terrorism program and reviewed policy documents related to this program. In addition, we reviewed a sample of closed international terrorism cases. The sampling process involved a questionnaire, which was completed by FBI personnel, to obtain profile information about all closed international terrorism cases. We sampled 1,100 randomly selected closed international terrorism cases from about 19,500 international terrorism investigations closed between January 1, 1982, and June 30, 1988.⁵ We used the results from our questionnaire to identify and select 160 cases for a detailed case file review.⁶

⁴International Terrorism: Status of GAO's Review of the FBI's International Terrorism Program (GAO/T-GGD-89-31, June 22, 1989).

⁵Subsequent to our selecting a random sample, our review of the data provided by the FBI showed that some of the cases on the computer print-outs were closed after June 30, 1988. The number of these cases actually selected, however, was only 2.1 percent and we chose not to modify our estimates because the effect was not material.

⁶Because we were denied access to some cases, we reviewed edited files for only 158 cases. See appendix II for further explanation about this matter.

We used the questionnaire to obtain general profile data about international terrorism cases (such as type of case and subject, number of files, dates opened and closed, reasons opened and closed) and to identify cases that involved monitoring of First Amendment-type activities. Our questionnaire was designed to yield an expected sampling error of plus or minus 5 percent at a 95 percent confidence level for all closed investigations. The results are statistically generalizable to an adjusted universe of 18,144 closed international terrorism cases based on a response rate of 91 percent.

Our detailed review of the 158 cases sampled focused on (1) the reasons the cases were opened, (2) investigative techniques used during the investigation, (3) any First Amendment activities that were monitored by the FBI, and (4) the reasons the cases were closed. Before giving us a copy of the case files, however, the FBI redacted information (removed or blacked-out data) from the files. They redacted information that they believed would or could potentially identify informants, ongoing investigations, and sensitive investigative techniques. They also removed information they had received from other agencies. We did not try to evaluate the strength or validity of the information in the case files.

A detailed description of our objectives, scope, and methodology is contained in appendix II. We requested written FBI comments on the report, but it did not provide them. However, we discussed the report with FBI officials who generally agreed with the facts. We incorporated other views of the officials where appropriate. We did our work between March 1988 and February 1990. Except for the data access and verification limitations discussed above, our work was done in accordance with generally accepted government auditing standards. The report has been revised to eliminate material that the FBI identified as classified information.

Results of International Terrorism Investigations

Between January 1982 and June 1988, the FBI closed about 19,500 international terrorism investigations. Our questionnaire results are generalizable to an adjusted universe of 18,144 of these cases. Of these 18,144 cases, we estimate that

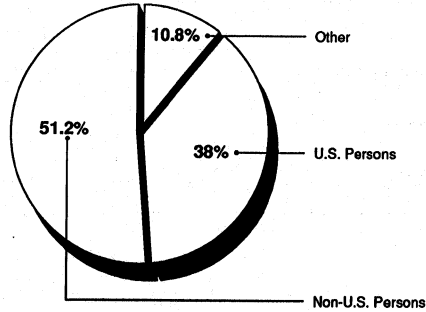
- 52.4 percent were opened on individuals and groups because the FBI had obtained information alleging that they were involved in international terrorism activities;
- 11.5 percent of the cases were opened because the individuals were affiliated with foreign countries that sponsored terrorism;
- 18.0 percent were opened for other reasons, such as an individual may have been engaged in espionage or may have had information about possible terrorist activities; and
- 18.1 percent were opened for a combination of these reasons.

Of the 18,144 cases, U.S. persons were the subjects in 38.0 percent of the investigations; non-U.S. persons were the subjects in 51.2 percent of the cases; and for the remaining 10.8 percent of the cases, the subjects were classified as other (e.g., groups, organizations, or unidentified). As part of the investigations, the FBI monitored First Amendment-type activities in 11.5 percent of the 18,144 cases. The FBI indexed individuals other than the subjects of the investigations in 47.8 percent of the 18,144 cases, and in about 38.7 percent of these cases the individual indexed was a U.S. person. The FBI closed 67.5 percent of its international terrorism investigations because no evidence indicating involvement in terrorist activities was found.

Subjects of International Terrorism Investigations

On the basis of our questionnaire, we estimate that U.S. persons (U.S. citizens or permanent resident aliens) were the subjects in about 38.0 percent of the FBI's terrorist investigations, and non-U.S. persons were the subjects in about 51.2 percent of the investigations (see fig. 2.1). Table 2.1 shows the type of subjects being investigated by case type, projected to an adjusted universe of 18,144 closed cases.

**Figure 2.1: Subjects of FBI International
Terrorism Investigations**



N=18,144

**Table 2.1: Estimated Number of Cases
by Subjects**

Subject type	Total	Percent
U.S. person	6,895	38.0
Non-U.S. person	9,297	51.2
Other ^a	1,952	10.8
Total	18,144	100.0

^aOther includes those cases in which the subject of investigation was a group or organization, was unidentified, or in which the person filling out the questionnaire did not know the subject type.

Reasons Cases Were Opened

Table 2.2 shows the reasons cases were opened by subject type projected to the adjusted universe. The reasons for opening the cases were listed on our questionnaires, which were completed by FBI employees. In about 52.4 percent of the cases, the FBI investigated persons or groups it suspected of engaging in or planning international terrorism. In about 11.5 percent of the cases, the FBI investigated individuals who were bound by citizenship or loyalty to a foreign country that sponsored terrorism.

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Table 2.2: Estimated Number of Cases by Reasons Cases Opened and Subject Type

Reason for opening case	Subject type				Percent
	U.S. person	Non-U.S. person	Other	Total	
Engaged in or planning international terrorist activities	4,458	3,774	1,275	9,507	52.4
Individual affiliated with countries that support terrorism	a	1,778	a	2,081	11.5
Engaged in espionage, sabotage, or intelligence gathering	571	667	a	1,271	7.0
Combinations ^b	904	2,028	a	3,283	18.1
Other reasons ^c	688	1,050	a	2,002	11.0
Total	6,895	9,297	1,952	18,144	100.0

^aThe sampling errors for these numbers were too large to make a meaningful estimate.

^bAgents filling out the questionnaires indicated more than one reason for the cases being opened.

^cOther reasons include such things as a subject has or may be about to furnish sensitive information to an unauthorized person, subject may have information about possible terrorist activities, and a criminal statute was violated.

Reasons for Opening the 158 Cases Reviewed

On the basis of our questionnaire, two categories—subjects were believed to be engaged in or planning international terrorism activities and subjects were individuals affiliated with foreign countries that sponsor terrorism—accounted for 63.9 percent of the cases being opened. To be more descriptive of the reasons cases were opened, we reviewed the 158 sampled cases. We developed the following categories:

- (1) The information indicated that the subject (or group) committed, planned, or was otherwise involved in a terrorist act. Examples would include the subject (1) was involved in an assassination, a bombing, or an arson; or (2) provided materials and/or funding for such activities.
- (2) The information indicated that the subject was a leader or member of a terrorist group. Examples would include (1) information from an informant that the subject "is a member or leader" or (2) the subject's name was listed on a group's official membership roster.
- (3) The information indicated that the subject may be associated with or have some connection with a terrorist group but that the membership in or link to a terrorist group was less than definite. Examples would include information that the (1) subject attended one or more group meetings, (2) subject's name was included in the personal address book

of a group member, or (3) subject was in contact with a known terrorist group leader or member.

(4) No basis to judge. Examples would include (1) cases transferred to another office and the information on why a case was opened in the first FBI field office was not clear from the files of the second office or (2) the information was redacted by the FBI during its review process before the files were given to us.

Our analysis of the 158 cases shows that 46 percent involved U.S. persons. Forty-four percent of the cases were opened because it was alleged that the subject was associated with a terrorist group. Another 30 percent were opened because it was alleged that the person was a leader or member of a terrorist group. Table 2.3 shows the basis for opening the 158 cases we reviewed.

Table 2.3: Reasons for Opening the 158 Cases Reviewed

Reason for opening case	Subject type				Total (percent) ^a
	U.S. person	Non-U.S. person	Group or organ.	Other	
(1) Committed or planned terrorist-type activity	9	6	4	0	19 (12)
(2) Leader or member member of a terrorist group	19	25	1	2	47 (30)
(3) Associated with or linked to a terrorist group	37	26	3	4	70 (44)
(4) No basis to judge judge reason for opening case	8	13	1	0	22 (14)
Totals	73	70	9	6	158
(Percent) ^a	(46)	(44)	(6)	(4)	(100)

^aThese percents are only applicable to this sample of 158 cases and are not representative of what may have been found in the universe of all closed international terrorism cases. See appendix II for a discussion of how these cases were selected.

We did not try to evaluate the strength or validity of the information or allegation that served as the reasons for opening cases. Examples describing the reasons for opening cases, some of the activities occurring during the investigations, and the reasons for closing cases are shown in appendix III.

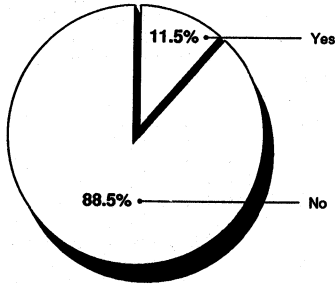
Monitoring of First Amendment Activities

Monitoring of individuals' and groups' participation in First Amendment-type activities is an investigative technique that the FBI uses in conducting international terrorism investigations. In monitoring, the FBI gathers information by directly observing or obtaining information from others (e.g., informants and other law enforcement agencies) about the subjects' participation in such activities. First Amendment-type activities include, but are not limited to, such activities as attending meetings, participating in a demonstration, appearing on radio or television broadcasts, or giving a speech.

The questionnaire and case file data did not contain sufficient information for us to draw conclusions about the FBI monitoring activities, including possible infringement of First Amendment rights. The questionnaire was not designed to provide specific information about the monitoring activity itself; it was designed to indicate only whether or not the FBI monitored First Amendment-type activities during the investigation.

Among the purposes of our review of the 158 cases was to try to determine the types of First Amendment activities that the FBI monitored and the techniques used to monitor the activities. The case files contained narrative, descriptive information, such as the summary memoranda; interview write-ups; results of records reviewed; information provided by informants; photographs of individuals; and copies of documents (e.g., pamphlets and newspaper articles). The files generally did not contain conclusions, except when the reason for closing the investigation was given (e.g., no information was found to indicate that the subject was involved in terrorist activities). In addition, the FBI redacted information it considered sensitive (for example, informants' names and sensitive investigative techniques) or that it had received from other agencies. Had the FBI not imposed these limitations, we may have been able to make conclusions about the FBI monitoring of First Amendment-type activities. (Informants' names were not of interest to us, but investigative techniques were.)

On the basis of the questionnaire results, we estimate that First Amendment-type activities were monitored in 2,080 (11.5 percent) of the 18,144 cases (see fig. 2.2). Of these 2,080 cases, 951 (45.7 percent) involved U.S. persons. Table 2.4 shows the number of cases with monitoring activity by subject type.

Figure 2.2: Percentage of Cases With Monitoring Activity

N=18,144

Table 2.4: Estimated Number of Cases by Monitoring of First Amendment Activities and Subject Type^a

Monitoring of First Amendment activities	Subject type			Total
	U.S. person	Non-U.S. person	Other	
Yes	951	751	^b	2,080
No	5,944	8,546	1,574	16,064
Total	6,895	9,297	1,952	18,144

^aFirst Amendment rights are afforded to non-U.S. persons as well as to U.S. persons and organizations in the United States.

^bThe sampling error for this number was too large to make a meaningful estimate.

Examples of Monitoring Activities

The following are examples of monitoring activities that we identified during our detailed review of 158 cases. We judgmentally selected these examples to present a variety of what activities were monitored and how they were monitored. We are not identifying the individuals and groups associated with these investigations because the FBI determined that this information was classified.

Case One

The FBI opened an investigation in July 1984 on an individual believed to be a member of a group that, according to the FBI's investigative file, advocates terrorism as a vehicle for obtaining its goals. An informant

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provided information to the FBI that was obtained through his attendance at a meeting sponsored by the group. The FBI also noted the license plate numbers of vehicles of individuals attending the meeting. The license numbers and names of the registered owners of the vehicles were indexed. The FBI closed the case in July 1986 because the subject was no longer associated with the group.

Case Two

The FBI opened an investigation in November 1983 on an individual believed to be a leader of a mosque, and his profile fit that of a particular terrorist group. An informant provided information on meetings held by a local chapter of the group to which the subject belonged. The information received indicated that the meetings were typical ones with prayers, readings, and distribution of publications from a country that supports terrorism. The religious meetings were usually followed by political discussions about current conditions in a country that supports terrorism. The FBI closed the case in November 1986 because the subject's activities were limited to handling religious functions at the mosque.

Case Three

The FBI opened an investigation in August, 1983 on the basis of information that the subject individual was a member of an international terrorist group. The case was closed in November 1983 because the subject moved to another city. According to the FBI, the case was reopened in February 1984 to determine if the subject of an investigation in another field office was the same individual as the subject of this case. The case was closed in March 1984 when it was determined that the subjects were not the same person. The case was again reopened in March 1987. According to the FBI, this case was reopened in 1987 because the FBI had information about an upcoming fund raiser sponsored by the terrorist group and that the subject, who had returned to the area, was a "hard core" activist for the group. In March 1987, the FBI and an informant monitored the fund raiser, which was held at a local church, to determine if terrorist group leaders were attending the event. The FBI, along with local police and sheriffs' offices, observed and recorded license numbers of vehicles parked in the neighborhood during the fund raiser. The informant also provided the FBI with leaflets, publications, and other items distributed during the event. The FBI closed the case in October 1987 because the subject and his activities were fully identified and the subject was not in a leadership role in the group.

Case Four

The FBI opened an investigation in July 1985 on a mosque that was being run by an organization in the United States known to be involved in intelligence-gathering activities on behalf of a country that supports terrorism. An informant attended meetings at the mosque, where he observed individuals participating in the reading of the Koran, prayers, and lectures. He told of pro-Khomeini meetings being held at the mosque and provided information about individuals attending the mosque. The FBI closed the case in February 1988 when the group moved to another mosque.

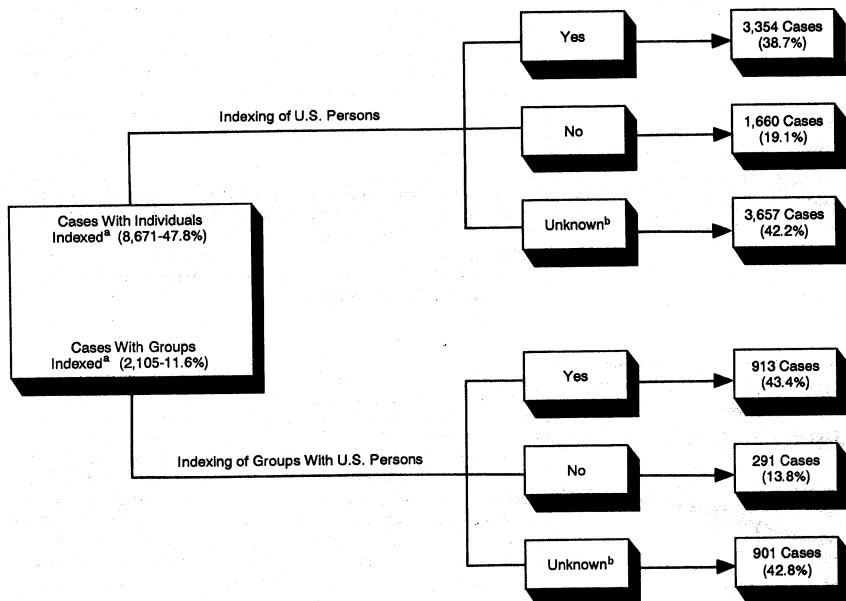
Case Five

The FBI opened an investigation in November 1986 on an individual whose name was listed in an article in a foreign newspaper. An informant provided the FBI with a copy of the publication, which identified the subject and others as contacts for known or suspected terrorists. The FBI closed the case in September 1987 because no information was developed indicating the subject was involved in terrorist activities.

Indexing of Names in
Terrorism
Investigations

Information that has been collected during an investigation may be indexed into an FBI database for future retrieval. Indexing is an authorized investigative procedure. Figure 2.3 shows our estimate of the number of cases with indexing of (1) individuals and groups and (2) U.S. persons. Indexing of individuals other than the subjects of the investigations occurred in 47.8 percent of the 18,144 investigations, and indexing of groups not the subject of the investigation occurred in 11.6 percent of the 18,144 investigations. The FBI indexed U.S. persons when they were not the subjects of investigations in 38.7 percent of the cases. In addition, the FBI indexed groups that were not the subjects of investigations and that had U.S. persons as members in 43.4 percent of the cases.

Figure 2.3: Indexing of Individuals and Groups Not Subjects of Investigations



N = 18,144

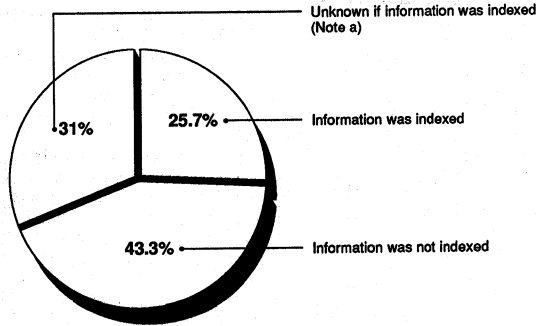
*Indexing of both individuals and groups, neither of which are the subjects of the investigations, may occur in any given case. Thus, there is an overlap of cases with indexing in these categories.

^bKnowledge about the "Unknown" could substantially change the percentages of the "Yes" and "No" categories.

Indexing of Information Because of Monitoring First Amendment Activities

On the questionnaire, we also asked if any indexing had been done as a result of the monitoring activity that had occurred during investigations. Of the 2,080 cases estimated to have had monitoring of First Amendment-type activities (see table 2.4), we estimate that 534 cases (25.7 percent) had indexing of information because of the monitoring activity. For 901 of the 2,080 cases (43.3 percent), no indexing was done as a result of the monitoring activity. For the remaining 645 cases (31.0 percent), however, the person completing the questionnaire indicated that he or she did not know if any indexing had been done as a result of the monitoring activity (see fig. 2.4).

Figure 2.4: Percentage of Cases With Monitoring Activity by Whether Information Was Indexed



N=2,080

*Knowledge about the "Unknown" could substantially change the percentages of the "Yes" and "No" categories.

Reasons Cases Were Closed

As shown in table 2.5, on the basis of our questionnaire, the reason cited for closing 67.5 percent of the cases was that no evidence was found linking the subject to international terrorism or terrorist acts. In 22.1 percent of the cases the FBI closed its investigations because the subject moved, left the United States, or could not be located.

Chapter 2
Results of International
Terrorism Investigations

Table 2.5: Estimated Number of Cases by Reasons Cases Closed and Subject Type

Reason for closing cases	Subject type			Total	Percent
	U.S. person	Non-U.S. person	Other		
Could not link the subject to terrorist activities	5,788	5,309	1,143	12,240	67.5
Subject moved or not located	519	2,947	^a	4,015	22.1
Other reasons ^b	588	1,041	^a	1,889	10.4
Total	6,895	9,297	1,952	18,144	100.0

^aThe sampling errors for these numbers were too large to make a meaningful estimate.

^bOther reasons include subject died, never entered the United States or the field office's territory, was not identified; case was transferred to another FBI field office; or unable to determine from the files.

Conclusions

Our analyses of the questionnaire responses and the 158 cases showed that the FBI did monitor First Amendment-type activities. The FBI monitored First Amendment-type activities in 2,080 (11.5 percent) of the closed cases, according to our questionnaire results. Of these 2,080 cases, the FBI indexed information as a result of monitoring the activities in at least 534 cases (25.7 percent).

We were not able to determine if the FBI abused individuals' First Amendment rights when monitoring these activities or if the FBI had a reasonable basis to monitor such activities. We could not make such determinations because the FBI did not give us complete access to the information in closed cases. Further, the case file information was mainly descriptive and generally did not contain explanations about (1) why the investigative steps, such as monitoring First Amendment-type activities, were taken; or (2) how the information was used.

The FBI's Investigation of CISPES

At the request of the Department of Justice, the FBI initiated a criminal investigation in September 1981 under the Foreign Agents Registration Act of 1938 to determine whether CISPES was required to register under the act. The investigation did not find a violation of the act but pointed out that CISPES did verbally support the opposition movement. The FBI closed the case in February 1982. However, the FBI continued to receive information about CISPES' activities.

The FBI opened an international terrorism investigation on CISPES in March 1983 on the basis of information gathered during the first investigation and information obtained from an informant. The informant said that CISPES was (1) being directed by the Farabundo Marti Front for National Liberation/Democratic Revolutionary Front, an organization identified as a terrorist organization; (2) providing financial support to that organization; and (3) preparing for terrorist activities in the United States. The investigation continued until June 1985, when the Office of Intelligence Policy and Review, after reviewing a summary of the investigation, concluded that "CISPES appears to be involved in political activities involving First Amendment activities but not international terrorism." On the basis of that statement, FBI headquarters ordered the CISPES investigation closed on June 18, 1985.

In January 1988, the Center for Constitutional Rights, a New York based lawyers group, publicly released 50 of about 1,200 pages of material it had received under the Freedom of Information Act from the 14 volume FBI headquarters files on CISPES. CISPES charged that the investigation violated individuals' and organizations' First Amendment and constitutional rights.

FBI's Internal CISPES Report

On February 2, 1988, the FBI Director, at the direction of the President, ordered an independent inquiry of the FBI's handling of the CISPES investigation. In doing the inquiry, senior FBI investigators and inspectors examined the FBI's investigation of CISPES to determine, among other things, if the FBI had broken any laws; violated Attorney General Guidelines or FBI rules, regulations, or policy; or used poor judgment in the exercise of the investigation. The inquiry also addressed, among other things, whether the investigation was initiated on a sound basis; whether the length of the investigation was justified; the oversight by the Department of Justice; the scope of the investigation; the reliability of the informant; and whether indexing was proper.

Appendix I
The FBI's Investigation of CISPES

The FBI's report on its CISPES investigation, dated May 27, 1988, concluded that the FBI properly conducted an investigation of CISPES as a criminal matter from September 1981 until February 1982. On the basis of information received during the 1981 investigation as well as information from an informant, the FBI properly opened the international terrorism investigation; however, the objectives were overly broad. The objectives were to determine the extent of direction and control furnished to CISPES leaders by terrorist groups in El Salvador and the extent and nature of CISPES' involvement in organizing and supporting terrorist activities in the United States. The report concluded that additional investigation would not have been warranted without the informant's information.

The report further concluded that the scope of the investigation was substantially and unnecessarily broadened when FBI headquarters directed all offices to treat each of the estimated 180 CISPES chapters as the subject of an investigation. According to the report, the primary and secondary thrust of the investigation should have been directed at the CISPES National Headquarters in Washington, D.C., and the approximately 10 regional offices. Even though FBI headquarters cautioned that the purpose of the investigation was not to investigate the exercise of First Amendment rights of CISPES members, investigations were authorized on any CISPES chapter as a part of the national organization.

The inquiry also found that inadequate supervision of the CISPES case occurred at FBI headquarters and the Dallas Field Office, which was the field office with primary responsibility for the investigation. Both field and headquarters agents failed to adequately conduct a background check in establishing the informant's creditability and failed to continually ensure the informant's reliability and accuracy. Further, they failed to provide adequate supervision and direction to the informant.

The inquiry further determined that 31 instances of potential violations of the Attorney General guidelines occurred, such as (1) conducting inquiries beyond what is permitted without opening an investigation, (2) receiving information about individuals' mail without having obtained proper authority to get such information, and (3) initiating investigations without an adequate basis for opening them. According to the report, most of the instances were minimal and there was no indication that the noncompliance was anything other than inadvertent.

Finally, the inquiry identified problems noted in earlier FBI reviews and inspections that still existed and contributed to the errors made during

Appendix I
The FBI's Investigation of CISPES

the CISPES investigation. A June 1982 internal audit report—"Terrorism Program Evaluation"—by the Office of Program Evaluations and Audits (OPEA) noted problems similar to those found by the CISPES inquiry. For example:

- Terrorism investigations were being conducted without a widely understood philosophical underpinning for the program.
- Insufficient articulation of policy had contributed to a degree of confusion and uncertainty, a vagueness of purpose, and a lack of uniformity in handling investigative and administrative matters.
- Training had not received sufficient attention, and increased training is needed in the field and at FBI headquarters in the development and handling of informants.

OPEA's June 1983 report—"Study of Informant Development and Operations"—found that even with the importance given to the role of informants in obtaining and bringing criminal investigations to successful conclusions, training agents to oversee informants is practically nonexistent in the FBI.

**FBI CISPES Report
 Recommendations**

The FBI's CISPES report resulted in the FBI Director issuing a directive outlining 33 policy and procedural changes to be made regarding such investigations. As of February 14, 1990, all of the 33 recommendations had been fully implemented, according to the Assistant Director, Inspection Division.

One recommendation resulted in the formation of a joint Department of Justice and FBI working group to make recommendations to the Attorney General concerning modification of the Attorney General's Foreign Counterintelligence Guidelines in such areas as (1) the extent to which the FBI can investigate members of a group when the group to which they belong is under investigation and (2) changes to the guidelines to address more specifically international terrorism investigations.

In September 1989, revisions to the Foreign Counterintelligence manual pertaining to international terrorism investigations became effective. The revised guidelines provide field offices more specificity in terms of reporting requirements for international terrorism investigations, particularly as they relate to investigations of organizations.

Objectives, Scope, and Methodology

In a February 1, 1988, letter, the Chairman, Subcommittee on Civil and Constitutional Rights, House Judiciary Committee, asked us to review the FBI's international terrorism program. The Chairman was concerned that the FBI's investigation of CISPES was overly broad and not properly focused. The Chairman wanted us to determine if the FBI collected and reported information on First Amendment activities, as in the CISPES investigation. As agreed with the Subcommittee, we obtained information on

- the basis on which the FBI was initiating international terrorism investigations;
- the scope and results of the investigations;
- whether the FBI had been monitoring First Amendment activities (such as demonstrations, meetings, speeches) during the investigations; and
- the reasons investigations were closed.

By letter dated July 27, 1989, the Chairman requested that we address some additional specific questions during our analyses of all cases (see app. IV). The Chairman's primary concern in his July 1989 letter was about cases the FBI opened on the basis of information that indicated that the subjects of the investigations had only been associated with or linked to a terrorist group.

We agreed with the Subcommittee to limit this review to closed cases only. We did our work at the FBI's headquarters office in Washington, D.C. To obtain information about the FBI's international terrorism program, we interviewed agency officials and reviewed policy documents related to this program.

We obtained an initial listing of all closed FBI international terrorism cases from January 1, 1982, to June 30, 1988, generated from the FBI's Terrorist Information System (TIS). We requested that only "office of origin" cases be listed. According to the FBI, the office of origin is the particular FBI field office primarily responsible for the investigation. Other field offices that assist in the investigation are known as "auxiliary offices." Based on the TIS information, the universe of international terrorism cases closed between January 1, 1982, and June 30, 1988, was 19,446 cases.

We used a two stage sampling process in order to develop a profile of closed international terrorism cases and to select cases for more detailed case review. The first stage was used to identify international terrorism cases of interest and to develop a profile of activities associated with

Appendix II
Objectives, Scope, and Methodology

these cases. For this stage, we randomly selected 1,100 international terrorism investigations stratified by case type from the initial universe of 19,446 closed international terrorism cases.

Subsequent to our selecting a random sample of cases, we determined that the computer print-outs provided by the FBI were not accurate. About 650 cases listed on the computer print-outs had closing dates after June 30, 1988. Further, the closing dates listed on the computer print-outs were not always consistent with the dates completed on the questionnaires. Only 21 of these 650 cases, however, were included in our analyses of 1,003 questionnaires. Because these 21 cases represented only 2 percent of the cases in our analyses, we chose not to adjust the results of our analyses to exclude this small number of cases.

In order to give us current information, the FBI had each field office update its case information in the TIS. Because of the time the FBI needed to update its database of closed international terrorism cases, we decided to proceed by drawing a stratified random sample based on case type in a two-phase process. Using standard statistical techniques, we drew the first-phase sample on the basis of cases identified for 42 of the FBI's 59 field offices.⁷ We selected the first-phase sample from these 42 field offices because they were the first ones to have completed updating the database of closed international terrorism cases. We drew a second-phase sample in a similar manner upon receipt of the case listing from the remaining field offices.

We designed a questionnaire to develop a profile of closed international terrorism cases. We asked questions about such things as type of cases, type of subject, number of files, reason for opening the investigation, length of investigation, indexing activity, and monitoring of First Amendment activities. Each case represented one subject (i.e., person or group) under investigation; cases could be opened and closed several times on the basis of updated information or activity, yet they were still considered one case for our analysis purposes.

All information and the flow of information was directed through FBI officials in the Terrorist Research and Analytical Center (TRAC), a unit within FBI's Counterterrorism Section. We gave a copy of the questionnaire to TRAC along with the list of sampled cases. TRAC distributed copies of the questionnaire to each of the field offices for completion on their

⁷The FBI currently has only 56 field offices. Since we began this review, the FBI closed its field offices at Alexandria, Virginia; Butte, Montana; and Savannah, Georgia.

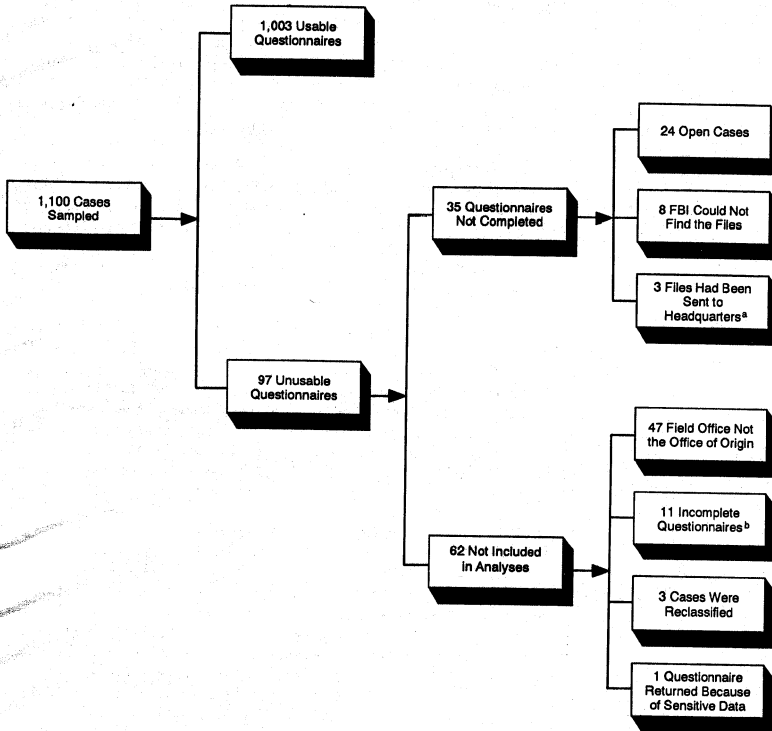
Appendix II
Objectives, Scope, and Methodology

cases. FBI field office personnel completed these questionnaires; the completed questionnaires were returned to TRAC, which forwarded them to GAO.

Of the 1,100 questionnaires distributed, 1,003 usable questionnaires (91 percent) were obtained. Figure II.1 shows the reasons why the other 97 questionnaires were not included in our analyses.

Appendix II
Objectives, Scope, and Methodology

Figure II.1: Questionnaires Included in Our Analyses



*FBI headquarters officials did not want to complete the questionnaires on these three cases because they believed the field offices were in the best position to know about the investigations.

^bThese questionnaires were incomplete because the files were administrative-type files and did not contain data about investigations.

Because this screening sample was selected from the total universe of closed international terrorism cases, the results obtained are subject to some uncertainty, or sampling error, when projected to the total universe of interest. This is typical when any sampling is done. We chose the sample sizes for each phase so that the sampling error would not be greater than 5 percent at the 95 percent confidence level. This sampling error was generally achieved for the total estimates. We generalized our sample results to an adjusted universe of 18,144 closed international terrorism cases using standard weighting methods.

In our second sampling stage, we grouped the 1,003 cases according to questionnaire responses about the monitoring of First Amendment activities and randomly selected cases for more detailed case file review on the basis of the responses to the questionnaires. This selection process involved focusing on those cases where there was monitoring activity, because we perceived that these cases would have a higher probability of potential infringement of First Amendment rights.

Of the 1,003 usable questionnaire returns agents completed, the survey indicated that some monitoring activity was involved in 229 cases. Of these cases, we randomly selected 120 cases for detailed record review. As a validity check, we randomly selected and reviewed 30 cases where the agents had reported that no monitoring activity took place. Thus, we checked the agents' perception regarding both the presence and absence of this activity. In addition, the House Judiciary Committee, Subcommittee on Civil and Constitutional Rights, asked us to review an additional 10 cases not selected randomly that consisted of 6 or more files.

Thus, we initially identified 160 closed cases for review. We reviewed 158 cases. Of the 160 cases initially selected, 13 turned out to be still open and therefore had to be excluded. We selected 11 replacement cases. We could not select replacement cases for the other two cases because they contained six or more files and no other cases with six or more files existed. In addition to the 13 cases, the FBI classified another 5 cases from the original 160 as sensitive. We were told that almost all of the information from these sensitive cases would have been removed before the FBI would have given us the files. We selected five replacement cases. Had we kept these sensitive cases in our sample, the FBI would have withheld or extensively redacted almost all of the information in these files because a sensitive investigative technique or information source would have been identified.

Appendix II
Objectives, Scope, and Methodology

Similar to the questionnaire, the cases sampled for the detailed case file review were also controlled through TRAC. We submitted our sample list of cases for review to TRAC personnel, who requested that the actual case files be sent to headquarters. The FBI's Legal Counsel Division's Civil Discovery Unit redacted the case files. Since we did not have access to the actual case file prior to redaction, we are unaware of what may have been screened out. Accordingly, we had material available for our review only after the redaction process.

We developed a case file review sheet for coding the 158 closed international terrorism cases selected. The primary activities reviewed concentrated on the following: (1) the basis for initiating the case, (2) investigative techniques used during the investigation, (3) any First Amendment activities that were monitored and/or observed either by the FBI or a secondary source, and (4) the reason the case was closed. Information about the 158 cases represents only these 158 cases, and we are not projecting the results to the universe.

Summary of Selected Cases Reviewed

The following case summaries are from the 158 cases we reviewed. These examples were judgmentally selected to describe a variety of cases showing the reasons the cases were opened, some of the First Amendment-type activities that were monitored during the investigations, and the reasons the cases were closed. The case files did not always explain why membership in a specific group warranted an investigation. We are not identifying the individuals and groups associated with these investigations because the FBI determined that this information was classified.

Case One

The FBI opened a case in March 1982 on a group on the basis of information that it was working in concert with members of a terrorist organization, which reportedly had engaged in terrorist acts. The information also indicated that it directed and controlled the terrorist organization. According to a March 1982 memorandum from FBI headquarters, the

"investigation of the [group] and its chapters should include identification of . . . [its] chapters throughout the United States, organizational structure, leading members, and support from foreign based terrorist organizations."

Various investigative techniques were used during this investigation, including interviewing individuals, using informants to obtain information, obtaining various publications, and physical and photographic surveillance. For example, a January 1983 memorandum from the field office to FBI headquarters indicated that publications were obtained and photographs were taken during a recent demonstration. According to the FBI, the photographs were then used to identify leaders of a known terrorist group. Another January 1983 memorandum indicated that information about a large meeting (about 400 members) was obtained through an FBI information source. The FBI closed this case in December 1988 because the investigative objective had been met. The objective, according to the September 1988 closing memorandum from FBI headquarters, had been to identify those group members who were directly supporting or directing the terrorist operations of the other group and thereafter initiate separate investigations on those individuals.

Case Two

The FBI opened a case in November 1981 on the basis of information that a group was preparing to assassinate high level U.S. officials. The case was closed in June 1982. From the information in the files, we could not determine why the case was closed. The closing memorandum from the

Appendix III
Summary of Selected Cases Reviewed

field office simply stated that no further investigation was being conducted at that time. The case was reopened in October 1983, apparently in connection with the bombing of the U.S. Marines headquarters building in Beirut, Lebanon. The case was again closed in August 1984 because the FBI could not develop any evidence indicating that the group was engaging in terrorist-type activities. This case was then reopened in March 1986 on the basis of information giving reason to believe that the group was, or may have been, engaged in international terrorism or activities in preparation thereof, or knowingly aiding or abetting a person in the conduct of these activities. Instances of monitoring of First Amendment activities during the investigation included FBI sources providing numerous publications and information about the events occurring at meetings and demonstrations. One source provided a video cassette of a meeting held at a local mosque. Another source told the FBI about a movie being shown at a local theater that depicted Israeli attacks on Lebanon and said that the group's supporters had attended the showings and held meetings there. A February 1988 memorandum from FBI headquarters questioned continuing the investigation. The memo stated in part:

"A review of FBI [headquarters] files regarding above captioned group . . . reveals the majority to be involved in the following activities: 1) Fundraising, allegedly for the purpose of providing humanitarian assistance to 'victims' of the civil war in Lebanon.

"Subsequent to this review of information at [FBI headquarters], it does not appear that further investigation is warranted. Consideration is particularly given to the lack of any terrorist acts committed by captioned group or one in which this group claimed credit."

In response to FBI headquarters' February 1988 memorandum, the field office closed the case in March 1988 because it could not develop specific and articulable facts that the group was involved in international terrorism as defined by the Attorney General's guidelines. In its closing memorandum, the field office wrote:

" . . . will advise appropriate Field Offices to discontinue investigation of the [group] and related [cases] whose sole criteria for investigation is their association with the [group] or contact by leading elements within the [group]."

Case Three

The FBI opened a case in January 1984 on an individual on the basis of an informant's allegation that the subject was a self-described advisor to one terrorist organization and a member of another. The Department of

Appendix III
Summary of Selected Cases Reviewed

Justice's Office of Intelligence Policy and Review (OIPR) reviewed a summary memorandum for this case and, in December 1985, FBI headquarters informed the field office that it was OIPR's opinion that the report lacked information regarding terrorist activities, or support of terrorist activities, on the part of the subject. In response to the memorandum, the field office closed the case in December 1985 because it could find no evidence that the subject had participated in terrorist activities or acted in concert with alleged members of a terrorist group.

Case Four

The FBI opened a case in May 1986 on an organization because it was named in a brochure distributed by another group affiliated with a country that supports terrorism, which was the subject of another FBI investigation. The brochure was obtained by the FBI during a physical surveillance of a gathering or meeting. The field office closed the case in August 1986, indicating that all logical investigation had been completed with negative results.

Case Five

The FBI opened an investigation in September 1985 on an individual to determine his affiliation with a particular organization. According to the case files, the objective of the organization is to overthrow the government of a foreign country, and a branch of the organization was responsible for a number of terrorist incidents. The subject of another FBI investigation had a driver's license with this subject's address. The field office, in its opening memorandum, stated that it was opening the case on this subject, along with three other individuals, to develop additional background information and to establish their possible relationship with the organization. During the investigation, an informant provided the FBI with information about conferences that were held by Islamic groups. Further, copies of the publication "Martyrdom" were obtained and reviewed as part of the investigation. Moreover, a list of U.S. and foreign Islamic organizations was provided to the FBI by another U.S. federal agency and was made part of the files. The investigation was closed in June 1988 because the subject had moved in August 1987 and continued investigation failed to locate the subject.

Case Six

The FBI opened an investigation in December 1981 on an individual identified as having been married to the daughter of a high level foreign official of a country that supports terrorism. In its opening memorandum, the field office indicated that it was opening the investigation

Appendix III
Summary of Selected Cases Reviewed

to determine if the subject was involved with the governments of countries that sponsored terrorism in furtherance of some terrorist activity. We did not see any indications of monitoring activities when we reviewed the files. According to the field office's closing memorandum, the case was closed in January 1983 because the investigation failed to develop any information that the subject was involved in any illegal or terrorist activities. The case was reopened in November 1984 on the basis of an informant stating that the subject was a trusted and well-regarded agent of a country that supports terrorism and that the subject also worked with an individual to get arms for that country. In its opening memorandum, the field office cited that it had closed its previous investigation of the subject because of the lack of evidence connecting the subject to terrorist activities. The memorandum also cited that the previous investigation revealed strong circumstantial evidence of a case of marriage fraud. The field office also stated in this memorandum:

"[The field office] feels strongly that [subject] is an important [foreign] agent, although it is doubtful that investigation will be able to document this or result in a successful prosecution of [subject]."

The case was closed in February 1986, again because the investigation failed to develop any information concerning the subject's participation in terrorist activities.

Case Seven

The FBI opened an investigation in January 1984 on the basis of information that the FBI observed the subject at a lecture by a supporter of a terrorist organization. The subject was identified as someone organizing a support group and who had collected money for the terrorist organization. Other than the FBI observing the lecture at which the subject was identified, we saw no other indication of monitoring activities when we reviewed the case file. The case was closed in July 1984 because the subject had been fully identified, was known to local sources, and no information had been developed to show that the subject was forming a support group for the terrorist organization.

Appendix IV

Response to Specific Questions in the Chairman's July 27, 1989, Letter

As indicated in chapter 2, we selected 158 cases for detailed case file review. In his July 27, 1989, letter, the Chairman asked that we address the following questions on the basis of our review of these 158 cases. The information presented below reflects the circumstances found in only the 158 cases we reviewed. The percentages reported in each question represents only these 158 cases and can not be generalized to the universe. (See app. II, pp. 35 and 36, regarding how these 158 cases were selected.)

Q1. What percentage of the case files you reviewed on subjects associated with or linked to terrorism involved the monitoring of First Amendment activity?

A1. Of the 158 cases reviewed, 70 cases were opened on subjects associated with or linked to terrorism. Of these 70 cases, 50 cases (70 percent) were on individuals that involved the monitoring of First Amendment activity, and 3 cases (4 percent) on groups or organizations that involved the monitoring of First Amendment activity.

Q2. What percentage of the case files you reviewed with more than two volumes involved (a) subjects associated with or linked to terrorism, (b) U.S. persons, and (c) monitoring of First Amendment activity?

A2. There were 43 of the 158 cases we reviewed that had more than 2 volumes. Of these 43 cases, (a) 16 cases (37 percent) were opened on the basis of information that the subject was associated with or linked to a terrorist group, (b) 21 cases (49 percent) were opened on subjects who were U.S. persons, and (c) 36 cases (84 percent) had monitoring of First Amendment activity during the investigation.

Q3. What percentage of case files you reviewed on subjects associated with or linked to terrorism involved indexing of names other than the name of the subject?

A3. Of the 70 cases on subjects associated with or linked to terrorism, 64 cases (91 percent) involved indexing of individuals other than the subject, and 2 cases (3 percent) involved indexing of groups or organizations.

Q4. What percentage of case files you reviewed on subjects associated with or linked to terrorism provided information leading to an arrest?

Appendix IV
Response to Specific Questions in the
Chairman's July 27, 1989, Letter

A4. Of the 70 cases reviewed on subjects associated with or linked to terrorism, 2 cases (3 percent) led to an arrest. The subjects of these two cases were not groups or organizations.

Q5. How many open international terrorism cases are there?

A5. As of June 30, 1989, the FBI had about 1,500 to 1,700 open international terrorism investigations.

Q6. How many closed cases had more than two volumes of files and what was the range?

A6. Of the 158 closed cases we reviewed, the number of files per case ranged from 1 to 24 files. Forty-three of the 158 cases had more than 2 files.

Q7. What is the range and average number of serials (documents) per file volume?

A7. Of the 158 cases reviewed, the average number of serials per file was 55 and ranged from 1 to 170 serials.

Q8. For the case files of one or two volumes, provide some examples of how many names of groups or individuals (other than the subject's name) were indexed per case?

A8. We asked the FBI to provide us with print-outs from the headquarters Automated Records Management System (ARMS) and the Field Office Information Management System (FOIMS) for 25 of the 158 cases we reviewed. ARMS is an integrated computerized system used within FBI headquarters to support the information needs of the FBI's Records Management Division. FOIMS is an automated system developed to assist FBI field offices in the collection, collation, analysis, coordination, and dissemination of information on criminal and intelligence investigations. Information is indexed into both systems.

We asked the FBI to provide us with a list of the indexing done for 25 selected cases and to show only once any names that had been indexed in a variety of ways. For example, if Jane W. Doe had been indexed in a case in several different ways (i.e., Jane W. Doe, J. W. Doe, Jane Doe), we wanted the list to count that indexing as only one entry. FBI officials said that they could minimize the repetitions, but that there might still be some names that would show up more than once because of how they

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were indexed. We did not attempt to verify the information provided by the FBI.

We selected 25 cases that had only 1 or 2 files to trace the amount of indexing that was done during these investigations. The cases were selected because these were the only ones of the 158 cases we reviewed that (1) had only 1 or 2 files and (2) were opened after (or just shortly before) FOIMS had been implemented. The results of our review of the ARMS and FOIMS indexing are summarized in tables IV.1 and IV.2, respectively.

Table IV.1: Results of Indexing in ARMS for 25 Selected Cases

Case	Subjects		Other indexed items				Total
	Names	Misc.	Names	Organ.	Tel.no.	Other ^a	
1	1	0	8	3	2	2	16
2	1	0	26	3	3	0	33
3	1	0	37	4	10	0	52
4	1	0	4	1	0	0	6
5	1	0	6	0	0	0	7
6	1	0	3	0	0	0	4
7	1	0	23	7	12	1	44
8	0	0	0	0	0	0	0
9	1	0	1	0	1	0	3
10	1	0	0	0	0	0	1
11	0	0	0	0	0	0	0
12	1	0	34	5	1	0	41
13	1	0	3	1	1	0	6
14	1	0	34	0	3	0	38
15	1	0	13	3	0	0	17
16	1	0	18	3	0	0	22
17	1	0	5	0	0	0	6
18	1	0	3	1	0	0	5
19	0	0	0	0	0	0	0
20	0	0	0	0	0	0	0
21	2	0	0	0	0	0	2
22	0	0	0	0	0	0	0
23	1	0	36	3	1	0	41
24	1	0	3	1	0	0	5
25	1	0	1	0	0	0	2
Total	21	0	258	35	34	3	351

^aOther includes such items as addresses and license plate numbers.

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Table IV.2: Results of Indexing in FOIMS for 25 Selected Cases

Case	Subjects		Other Indexed Items				Total
	Names	Misc.	Names	Organ.	Tel.no	Other ^a	
1	3	0	49	2	0	0	54
2	0	0	6	3	2	0	11
3	4	0	46	7	26	0	83
4	7	0	0	0	0	0	7
5	6	0	27	0	1	0	34
6	2	1	4	0	0	0	7
7	3	0	48	2	13	9	75
8	3	1	4	0	0	2	10
9	4	0	7	0	2	2	15
10	8	0	17	3	9	11	48
11	1	0	1	0	0	0	2
12	3	0	70	5	0	1	79
13	0	0	0	0	0	0	0
14	1	0	6	0	0	0	7
15	1	0	75	18	2	0	96
16	3	0	40	11	22	5	81
17	1	1	19	1	10	2	34
18	1	0	0	0	0	0	1
19	2	0	14	1	1	0	18
20	1	0	0	0	0	0	1
21	2	0	0	0	0	0	2
22	0	0	4	0	0	0	4
23	6	0	32	3	11	4	56
24	0	0	0	0	0	0	0
25	0	0	0	0	0	0	0
Total	62	3	469	56	99	36	725

^aOther includes such items as addresses and license plate numbers.

In 18 of the 25 cases, more items were indexed into the FOIMS than were indexed into ARMS. For six cases, more items were indexed into ARMS than into FOIMS. For the remaining case, the same number of items (two) were indexed into both systems.

Q9. What reports or analyses compiling information from two or more international terrorism cases did the FBI prepare during the period January 1, 1982, through June 30, 1988? How did the FBI decide what reports or analyses to prepare, and what data did it use?

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A9. We obtained an overview from agency officials about TRAC's role in supporting international terrorism investigations. We were not allowed to interview TRAC analytical staff. However, we did receive a written response to questions we asked regarding TRAC's analytical capabilities, the types of analytical assistance (reports/analyses) TRAC provides to the operational units and field offices in support of their international terrorism investigations, and how these reports/analyses are used. The following information was provided by the FBI in response to our questions.

In 1980, TRAC was established at FBI headquarters to (1) automate and analyze information collected on known terrorists and terrorists groups active in the United States, (2) make assessments of the information, and (3) publish various reports and forecasts of potential terrorist threats. The Terrorist Information System (TIS), a database established in 1985, is an on-line computer system that TRAC maintains to support the counterterrorism program and its investigations.

FBI officials said that TRAC does not routinely prepare reports that show actual or potential relations among subjects of investigations or groups. TRAC conducts research on terrorist groups that have planned or have been engaged in violent or intelligence-gathering activities. TRAC-prepared reports and analyses are done at the request of FBI headquarters or field supervisors, with the approval from FBI headquarters before their preparation and dissemination. When preparing these documents, TRAC personnel conduct research by reviewing FBI investigative files, public source documents, and information received from other components of the U.S. intelligence community. The FBI considers the reports as educational in nature and intended to improve the effectiveness of the FBI's investigative agents.

TRAC disseminates FBI analytical studies and other terrorist-related information to FBI personnel; appropriate agencies of the U.S. government; and occasionally to foreign or domestic law enforcement agencies, depending upon the subject of the investigations and the intended targets—for example, a head of state.

We asked for a list of reports and analyses generated by TRAC since January 1987. FBI officials said that TRAC maintains a list of reports and analyses dating back only one calendar year. However, the FBI provided a sampling of the types of reports and analyses generated by TRAC during calendar years 1988 and 1989 (see table IV.3). FBI officials said

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they could not provide us with a complete list because it would include information about ongoing investigations.

Table IV.3: Examples of TRAC Reports
(Calendar Years 1988-1989)

Research projects:	- Domestic right-wing neo-Nazi Groups
	- Far East—an investigation case analysis
General projects:	- Terrorists threat assessment for the White House
	- Input to the 1988 TRAC publication entitled "Terrorism in the United States"

In addition to the examples of reports generated by TRAC shown above, the FBI also responded to various congressional inquiries, did research for speeches, and responded to other miscellaneous questions.

Appendix V

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